No. 349

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United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

AGAINST

ACY LENNON,

Defendant-Appellant.

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SECOND CIRCUIT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

AGAINST

ALY LENNON,

Defendant-Appellant.

Statement Under Rule 15b

On September 27, 1955, the defendant was indicted on five counts of income tax evasion covering the years 1949 through 1953 inclusive. In response to that indictment the defendant was arraigned and pleaded not guilty. The indictment bore number C-148-204.

Thereafter, and on July 2, 1956, under an indictment bearing number C-150-247, the defendant was indicted again, by a different grand jury. To this latter indictment the defendant also appeared and pleaded not guilty. This second indictment duplicated the first four counts of the first indictment; added an additional item of unreported income to the fifth count of the first indictment; and, included a new sixth count of unreported income for the year 1954.

Both indictments charged offenses under Title 18, U. S. C. A. 145(b).

Statement Under Rule 15b

Various interim proceedings took place prior to trial leading to the service by the Government of a bill of particulars for each indictment.

By order of Hon. Edmund L. Palmieri, District Judge, dated August 21, 1956, the first count of each indictment was severed and the first count of the first indictment was consolidated with and became the first count of the second indictment.

On October 4, 1956, the defendant went to trial on the consolidated indictment before Hon. Archie O. Dawson, District Judge, and a jury.

On October 19, 1956, the jury returned a verdict of "guilty" against the defendant on the first four counts of the indictment; "not guilty" as to the fifth count of the indictment; and, reported a disagreement on the sixth count of the indictment.

On October 22, 1956, the defendant was sentenced to serve a year and a day on the first count of the indictment, and a year each on the second, third and fourth counts—the sentences to run concurrently. The defendant was also fined $1,000 each on the first and second counts.

Judgment of conviction was entered on October 22, 1956.

Throughout the proceedings the Government was represented by Hon. Paul W. Williams, United States Attorney, appearing by Thomas A. Bolan, Esq., Assistant United States Attorney; and the defendant was represented by Leonard Feldman, Esq.

Indictment No. 148-204

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

AGAINST

ACY LENNON,

Defendant

The Grand Jury charges:

That on or about the 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Indictment No. 14-204

COUNT TWO

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U. S. C. Section 145(b)).

COUNT THREE

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, willfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26 U. S. C. Section 145(b))

COUNT FOUR

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year

was the sum of $2,657.63, that they were entitled to exemptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600, who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return, whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600, who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $390.19.

(Title 26 U. S. C. Section 145(b)).

PAUL W. WILLIAMS
United States Attorney

JOSEPH W. BARBER
Foreman.

Indictment No. 150-247

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

The Grand Jury charges:

That on or about 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Indictment No. 150-247

COUNT TWO

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collections District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar years was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U.S.C. Section 145(b)).

COUNT THREE

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26, U. S. C. Section 145(b)).

COUNT FOUR

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year

was the sum of $2,657.63, that they were entitled to exemptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600. who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return, whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600. who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $390.19.

(Title 26 U. S. C. Section 145(b)).

PAUL W. WILLIAMS
United States Attorney

BENJAMIN J. BUTTENWEISER
Foreman

Indictments Nos. C 148-204 and C 150-247 as Consolidated by Order of Hon. Edmund L. Palmieri, U. S. D. J., Dated August 21, 1956

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

COUNT I (C 148-204)

The Grand Jury charges:

That on or about 15th day of March, 1950, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,091.25, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,691.25, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $388.39.

(Title 26 U. S. C. Section 145(b)).

Consolidated Indictments Nos. C 148-204 and C 150-247

COUNT TWO (C 150-247)

The Grand Jury further charges:

That on or about the 13th day of June, 1951, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1950 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,586.20, that he was entitled to exemptions for "Acy Jr." and "William" as dependent sons, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $5,286.20, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not dependent sons, and the amount of income tax due to the United States of America on said return was $525.41.

(Title 26 U. S. C. Section 145(b)).

COUNT THREE (C 150-247)

The Grand Jury further charges:

That on or about the 15th day of March, 1952, in the Southern District of New York, Acy Lennon, the defendant, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the

calendar year 1951 by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent income tax return, wherein he stated that his net income for the said calendar year was the sum of $3,159.40, that he was entitled to exemptions for "Acy Jr." and "William" as children with 1951 gross incomes of less than $600, who received one-half of their support from him in 1951, and that there was no tax due and owing on said return, whereas, as he then and there well knew, his net income for the said calendar year was the sum of $4,759.40, he was not entitled to claim the said "Acy Jr." and "William" as exemptions in that they were not children with 1951 gross incomes of less than $600, who received more than one-half of their support from him in 1951, and the amount of income tax due to the United States on said return was $488.50.

(Title 26, U. S. C. Section 145(b)).

COUNT FOUR (C 150-247)

The Grand Jury further charges:

That on or about the 15th day of June, 1953, in the Southern District of New York, Acy Lennon, the defendant herein, who during the calendar year 1952 was married, did unlawfully, wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue, Upper Manhattan, New York, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $2,657.63, that they were entitled to ex-

emptions for "Acy Jr." and "William" as children with 1952 gross incomes of less than $600, who received more than one-half of their support from the said Acy Lennon and his said wife in 1952, and that there was no tax due and owing on said return; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $4,157.63, they were not entitled to claim the said "Acy Jr." and "William" as exemptions in that the said "Acy Jr." and "William" were not children with 1952 gross incomes of less than $600, who received more than one-half of their support from them in 1952, and the amount of income tax due to the United States of America on said return was $330.19.

(Title 26 U. S. C. Section 145(b)).

* * * * *

PAUL W. WILLIAMS
United States Attorney

Bill of Particulars No. 148-201

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

United States of America, for its Bill of Particulars, by Paul W. Williams, United States Attorney for the Southern District of New York, alleges as follows:

1. The sum of $4,691.25 set forth in Count One of the Indictment as being defendant's net income for the year 1949 is arrived at as follows:

Net Income reported on return	$3,091.25
Items of Income unreported on return:	
3/18/49	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,691.25

2. The sum of $5,286.20 set forth in Count Two of the Indictment as being defendant's net income for the year 1950 is arrived at as follows:

Net Income reported on return	$3,586.20
Items of Income unreported on return:	
3/16/50	
Payment for services rendered in preparing income tax returns	1,600.00

Bill of Particulars No. 148-204

3/24/50	
Payment for services rendered in preparing income tax returns	100.00
	$5,286.20

3. The sum of $4,759.40 set forth in Count Three of the Indictment as being defendant's net income for the year 1951 is arrived at as follows:

Net Income reported on return	$3,159.40
Item of Income unreported on return:	
March 1951 (Specific date not known)	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,759.40

4. The sum of $4,157.63 set forth in Count Four of the Indictment as being defendant's net income for the year 1952 is arrived at as follows:

Net Income reported on return	$2,657.63
Item of Income unreported on return:	
7/8/52	
Commissions on sale of apartments	1,500.00
	$4,157.63

* * * * *

6. The only entries on the defendant's tax returns which the United States of America claims to be wilfully false are as follows:

Bill of Particulars No. 148-204

(a) Those entries claiming exemptions to which he was not entitled, as set forth in the Indictment.

(b) Those entries dealing with the computation of tax, in that defendant, having wilfully failed to report the items of income set forth in this Bill of Particulars and having wilfully claimed false exemptions as set forth in the Indictment, knew that the amount of tax computed was not the amount that was actually due and owing.

Dated: New York, N. Y.
December 6, 1955

.....

PAUL W. WILLIAMS
United States Attorney for the Southern
District of New York
Attorney for United States of America

By .....

THOMAS A. BOLAN
Assistant U. S. Attorney
Office & P. O. Address:
United States Courthouse
Foley Square, New York, N. Y.

Bill of Particulars No. 150-247

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

[SAME TITLE]

—o—

United States of America, for its Bill of Particulars, by Paul W. Williams, United States Attorney for the Southern District of New York, alleges as follows:

1. The sum of $4,691.25 set forth in Count One of the Indictment as being defendant's net income for the year 1949 is arrived at as follows:

Net Income reported on return	$3,091.25
Item of Income unreported on return:	
3/18/49	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,691.25

2. The sum of $5,286.20 set forth in Count Two of the Indictment as being defendant's net income for the year 1950 is arrived at as follows:

Net Income reported on return	$3,586.20
Items of Income unreported on return:	
3/16/50	
Payment for services rendered in preparing income tax returns	1,600.00

Bill of Particulars No. 150-247

3/24/50	
Payment for services rendered in preparing income tax returns	100.00
	$5,286.20

3. The sum of $4,759.40 set forth in Count Three of the Indictment as being defendant's net income for the year 1951 is arrived at as follows:

Net Income reported on return	$3,159.40
Item of Income unreported on return:	
March 1951 (Specific date not known)	
Payment for services rendered in preparing income tax returns	1,600.00
	$4,759.40

4. The sum of $4,157.63 set forth in Count Four of the Indictment as being defendant's net income for the year 1952 is arrived at as follows:

Net Income reported on return	$2,657.63
Item of Income unreported on return:	
7/8/52	
Commissions on sale of apartments	1,500.00
	$4,157.63

7. The only entries on the defendant's tax returns which the United States of America claims to be wilfully false are as follows:

Bill of Particulars No. 150-247

(a) Those entries claiming exemptions to which he was not entitled, as set forth in the Indictment.

(b) Those entries dealing with the computation of tax, in that defendant, having wilfully failed to report the items of income set forth in this Bill of Particulars and having wilfully claimed false exemptions as set forth in the Indictment, knew that the amount of tax computed was not the amount that was actually due and owing.

Dated: New York, N. Y.
July 2, 1956

.....

PAUL W. WILLIAMS
United States Attorney for the Southern
District of New York
Attorney for United States of America

THOMAS A. BOLAN
Assistant U. S. Attorney
Office & P. O. Address:
United States Courthouse
Foley Square, New York, N. Y.

Excerpts From Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C. 148-204
C. 150-247

—o—

[SAME TITLE]

—o—

Before: HON. ARCHIE O. DAWSON,
District Judge.

New York, October 4, 1956
2:00 o'clock p.m.

APPEARANCES:

PAUL W. WILLIAMS, ESQ., United States Attorney, for the Government; By Thomas A. Bolan, Esq., Assistant United States Attorney.

LEONARD FELDMAN, ESQ., Attorney for Defendant; Charles C. Cohen, Esq., of Counsel.

(A jury was duly empaneled and sworn.)
(Three alternate jurors were duly empaneled and sworn.)
(Adjourned to October 5, 1956, at 10:30 a.m.)

1A New York, October 5, 1956.
10:15 o'clock a.m.

Colloquy

TRIAL RESUMED

(The following proceedings took place in the robing room:)

The Court: In the absence of the jury, Mr. Feldman, I understand that you have a motion to make.

Mr. Feldman: I do, your Honor.

The Court: Yes?

Mr. Feldman: Your Honor, the indictment consists of six counts, and each count relates to a particular year and without exception each count is made up of a number of items.

To illustrate that, your Honor, so that you may follow the motion which I am about to make, you will note that in the first count, the very first count——

Mr. Bolan: Pardon me for interrupting, but just to make one thing clear, there are actually two indictments here, your Honor, and they have been con- (1B) solidated.

Mr. Feldman: There has been consolidation of the two indictments, but please let me make my motion first.

The Court: All right. Let him make his motion.

Mr. Feldman: And then you can say whatever you want later on when I am through.

Now, going to the first count, your Honor, you will notice that——

Mr. Bolan: Which indictment is this? I am sorry, Mr. Feldman, but there are two indictments, and you will admit that, so that I don't know which one you are referring to.

Mr. Feldman: Which indictment is on trial?

Mr. Bolan: There are two indictments on trial.

Mr. Feldman: Two indictments on trial?

The Court: I have before me Indictment No. C. 148-204 and Indictment No. C. 150-247 as consolidated by order of Judge Palmieri dated August 21, 1956.

Mr. Feldman: Correct, your Honor, as to the consolidation and now the one indictment which is now before you, consisting of six counts.

(10) The Court: And you are referring to Count 1 in Indictment which was originally C. 148-204?

Mr. Feldman: Correct.

The Court: All right. What is your point?

Mr. Feldman: You will notice that there are two items in that count and the first two items relate to dependencies and to an alleged understatement of net income.

Now, it is quite conceivable, your Honor, and as we believe will happen here, one or both of these two items in the first count may not be submitted to the jury depending, of course, upon the proof adduced by the Government, but taking all of the counts now, and I am addressing myself now to all of them, the only reason I have pointed out these two items is that both items are actually independent items for which there would have to be independent proof.

I would point out to the Court that the indictment is defective on its face. The Court will note that the indictment allegedly stems from a violation of 145(b) of the 1939 Code, and in order for a 145(b) indictment to issue or to be effective there must be of necessity a tax deficiency, and if there is no tax deficiency, there can be no conviction, or (11) for that matter can there be an indictment under 145(b).

The Court: Do you claim that this has to do with a tax deficiency?

Mr. Feldman: Yes.

Now, the indictment so far as its counts relate to dependencies which comprise the years 1949 to 1952 inclusive, it alleges certain facts in the negative, the fact that the defendant alleged that there were two dependencies shown on the return, and that the defendant then and there well

knew that he was not entitled to claim the said dependents, thereby limiting his exemptions in that he was not entitled to claim them in the dependent sense.

Now, as to this statement alone, and I am limiting myself to this point in the immediate question, although my motion has a scope far greater than the issue of dependency, but that statement alone does not allege a crime under 145(b) because first it does not allege any contention by the Government as to the number of exemptions to which the defendant was in fact entitled as compared to the number of exemptions which he actually took; second, there is nothing set forth as to the tax which the Government claims to be (1E) due which is based in whole or in part on any number of improper exemptions, and I use the word "exemptions" here, your Honor, as distinct from dependencies, because a tax credit under the 1939 Code follows a number of exemptions to which a taxpayer is entitled, not to the number of dependents which he necessarily may have taken; third, it is impossible, your Honor, to read the indictment and determine from that reading that the defendant took more exemptions than he was in fact entitled to, because the indictment is completely silent as to the number of exemptions to which he was actually entitled.

As a matter of fact, in reading the Government's bill of particulars, which is an amplification of the indictment, you will note that the Government concedes correctness in the entire return and claims only the false identification of dependents and the amount of overstatement of income, but at this moment I am limiting myself to this issue of dependents, and nowhere in the bill of particulars or in the indictment is any statement made that the number of exemptions to which the defendant was entitled was a lesser number than that which he actually took in the return, and in order to illustrate that, your Honor, if in (1F) fact the

number of exemptions to which the defendant was entitled was correctly taken, then regardless of the identity of those exemptions there could be no indictment under 145(b) because on this point alone and ignoring for the moment the alleged understatement of income, there can be no tax deficiency.

Now, concerning 145(b) mere error or falsity in the identity of the exemption is not a crime under that particular section, if as a result of such falsity there is no change in tax liability.

Thus, if, in fact, the defendant was not entitled to the sons whom he took but there were any other exemptions to which he was in fact entitled so that the number of exemptions actually taken are the correct number of exemptions, there would be no tax deficiency and the indictment could not issue, or, having issued, could not stand.

The Court: The indictment says on its face that there was a tax deficiency. It gives this as apparently one of the bases on which the Government alleges that there was a tax deficiency.

Mr. Feldman: Your Honor, I point out to the Court that the statement of tax deficiency per se is considered as mere surplusage by the Court. The crime (1G) under 145(b) is the attempt to evade taxes.

The Court: And the indictment so alleges. It alleges an attempt to evade taxes and that there was a tax deficiency as a result of that wilful act. It gives two instances which resulted; one was an understatement of income, two, an improper claim of exemptions.

Mr. Feldman: Right. Now, had the indictment limited itself, your Honor, for the particular years to the statement which you made before that, that is, before the explanatory part, there could be no attack on the indictment because the indictment would be then said to allege a crime.

The Court: You say the indictment puts in too much information?

Mr. Feldman: No, the indictment as such, your Honor, the information which it puts in might of necessity be considered surplusage, but the bill of particulars controls.

The Court: I am looking merely at the face of the indictment.

Mr. Feldman: Your Honor, on a motion of this type the indictment may be read together with the bill of particulars to determine, because the bill (1H) of particulars is considered in amplification of the indictment.

May I make a respectful suggestion to the Court?

In view of the fact that there has been an understanding that there will be a decision reserved and briefs submitted at a later point, the arguments which suggest themselves to the Court may perhaps be better disposed of after those briefs are submitted and the Court has had a chance to study them.

The Court: I want to look at this bill of particulars.

Mr. Feldman: All right.

The Court: Where is the bill of particulars?

Mr. Feldman: So that I can aid the Court, I have a copy here.

The Court: Let me look at your copy of the bill of particulars.

Mr. Feldman: May I direct the Court's attention to the statement—I think you will find it at the bottom of the third page, second page.

The Court: All right, I have looked at the bill of particulars. Is that the same point that you have reference to or——

(1I) Mr. Feldman: The dependency language is repeated throughout the counts in which the dependency items refer.

The Court: All right.

Mr. Feldman: Now, the fatal defect which the defendant claims to appear on the face of the indictment as amplified by the bill is there is no allegation by the Government as to the number of exemptions to which the defendant was in fact entitled. As a matter of fact, the bill of particulars, limiting itself, as it does, set up the number of exemptions taken by the defendant on his return.

Now, this is not, your Honor, a mere technicality, an omission which can be read into the indictment or supplied, because the very heart of the indictment is illustrated by the Government's own analysis of its case in the statement appearing in the bill of particulars that the only entries on the defendant's tax return which the United States of America claims to be wilfully false are as follows:

"A. Those entries claiming exemptions to which he was not entitled as set forth in the indictment."

If we are to accept the Government's position (1J) as being a straightforward position and a position stated with candor and honesty, then we must of necessity assume that the Government is claiming falsity merely in identity and not making any commitment or committing statement as to the number of exemptions to which the defendant was in fact entitled. And without such a statement or claim the indictment on its face must fall, because the only thing which determines tax liability is the number of exemptions to which a particular defendant may or may not be entitled. And the identity of them for the purpose of an indictment under 145(b) is really immaterial.

Now, your Honor, there is another fatal defect in the indictment in that the indictment is based, and you can see that, your Honor, in the first count on so-called net income, an understatement of net income.

Colloquy

Now, I would point out to the Court that nowhere in the 1939 Code nor in the 1954 Code is there any provision with regard to the tax to be paid on net income as such. Section 11 and Section 12 of the Code—certainly of the 1939 Code, there was a slight change in the year 1954 Code, referred to two items of tax, the so-called normal tax and the so-called surtax. (JK) Now normal tax, which in this particular situation is actually an anomalous situation, is three percent of the amount of net income in excess of credit against net income provided in Section 25. Section 25 includes, incidentally, your Honor, the dependency credits, and these credits include these items such as dependency and certain interest income. As the Court can very readily see, the indictment speaks only of net income. Net income is specifically defined in Section 21(a) as follows: "Net income means the gross income computed under Section 22, less the deductions allowed by Section 23." It does not cover any exemptions or credits under Section 25 which an individual is entitled to before any tax may be imposed. Now, it follows that when the indictment speaks of net income it is speaking of a tax concept which does not exist in the Code. And speaking of that tax concept in that manner, your Honor, this being a criminal indictment, the indictment and the law as such must be strictly construed, and this part about net income and the smaller tax means the smaller part. The greatest part of the tax is under the 1939 Code, in that situation comes about under the surtax section. Section 22(b) the tax for each taxable year upon the so-called surtax net income. Section 12(a) (JK) defines surtax net income as the amount of the net income in excess of the credits against net income provided in Section 25(b). The total tax due was a combination of the two.

Colloquy

The Court can readily see that net income alone will not establish the tax to be paid by a taxpayer no matter how incorrect it may be. The determination of tax liability is the existence of the amount of normal tax net income and surtax net income, and before the Government can sustain an indictment, that indictment must set forth that the normal tax net income and the surtax net income reported by the taxpayer in his return is erroneous. And to use merely the words "net income" would be as erroneous as to use the words "gross income" because the plain fact of the matter is that under the tax law there is absolutely no tax on net income any more than there is tax on gross income, and the failure to provide the correct return with regard to net income does not establish in and of itself any tax deficiency.

Now there is another point. The Court will note, as I pointed out before, that the indictment on its face is phrased in the negative, namely, that he was not entitled to claim the said Acy, Jr. and William as exemptions in that they were not dependent sons. Here, your Honor, we come across a problem.

(1M) The problem that we come across is this. The word "dependent" modifies the word "sons." It is in the adjectival description of the sentence. In other words, as I read this indictment, the Government concedes that there are sons but that in fact these sons were not dependents, but even if they were to prove this, your Honor, this in itself wouldn't establish any tax deficiency because we come right back to the issue of the number of exemptions to which the defendant was in fact entitled and which number the Government makes no statement about in its indictment and which in its bill of particulars it concedes.

I point something else out to your Honor at this time with regard to this motion and that is that there is a

statute of limitations question here. There has been much written in recent years, I daresay in the last two or three years, on this question of 3616(a) as compared to 145(b), and I think the Court is very well aware of the Moran case, the Allied Stevedoring, American Stevedoring case and so on. We are too.

However, in the motion that we make now we seriously make, because havin read the briefs in all those cases——

The Court: What more do you say on that? Why (4N) are they barred by the statute of limitations?

Mr. Feldman: We are saying that for the years 1949 through the year 1952 inclusive are barred by 3616(a).

The Court: On what basis?

Mr. Feldman: We are saying it on this basis, your Honor, that the only allegation in this indictment, your Honor, is the fact that the defendant filed a false return.

The Court: What is the statute of limitations on that?

Mr. Feldman: Three years, under 3616(a). Except for the 1954 Code—it is still three years, but they changed the language of 3616.

At this hour I would like to leave it at this point—I made a commitment to the Court that I wouldn't argue at all and that I would simply put my motion on the record and that I would argue it in my brief at a later point. I would like to keep to the commitment, your Honor.

The Court: Well, I deny your motion to dismiss the indictment on the face of the indictment. I don't think any of the points that you have made there are sufficient to dismiss the indictment on the face of (10) the indictment. The indictment clearly states what the charge is, sufficient to advise the defendant of it, and if in fact he was entitled to dependents, that he misnamed the dependents or something like that, why, of course that is pertinent ground for proof at the trial and will be taken into account at the trial.

On the question of the statute of limitations, if there is anything to that, of course I will be glad to receive a brief.

Mr. Feldman: May I make a suggestion to the Court, and in doing so I do not intend to impose upon you. I would suggest to the Court that rather than deny it now, we have searched these cases thoroughly and very extensively——

The Court: You mean on the——

Mr. Feldman: On the dependency question.

The Court: No. I deny your motion.

Mr. Feldman: May I make the suggestion to your Honor that the denial at this point accomplishes nothing, as far as the trial is concerned. I would suggest that you reserve decision on that for this reason, your Honor: so far as we have been able to determine, and we have even gone through the files in this court and conducted a search and this has been the only trial that we have (1P) been able to find in which the dependency issue is involved as a matter of proof. There have been a number of dependency cases where there have been pleas. There have been none, so far as we know, that were tried.

Mr. Bolan: The Dodson case.

Mr. Feldman: In the Dodson case the woman admitted to the grand jury that she had taken dependents but the issue was whether or not she had done it wilfully.

The Court: And the issue in this case is whether or not this defendant has wilfully sought to evade taxes by claiming certain people as dependents. That is one of the issues.

Mr. Feldman: That is right, your Honor.

The Court: That is one of the issues, on the face of the indictment it is one of the issues. Now if in fact he made a mistake and he named one dependent when he is entitled to another or something like that, why, then there is no wilful intent to evade taxes.

Mr. Feldman: That is not the issue at all, your Honor. In view of the hour and in view of the fact that we shouldn't argue the motion at this point, I would make the recommendation that I do because I make it quite seriously —I am not standing here before a jury trying to influence them in their thinking——

(1Q) The Court: No. I am going to deny the motion. I think that the case can go ahead.

Mr. Feldman: Your Honor, why don't you reserve decision?

The Court: I don't want to have unfinished business around.

Mr. Feldman: It won't be unfinished because I am only going to renew the motion.

The Court: You can renew the motion at the end of the Government's case of course, but so far as this indictment alleges something on its face, I think it is sufficient; whether the Government has enough proof or anything like that is another matter.

I deny your motion to dismiss the indictment on the face of the indictment. You have an exception.

* * * * *

(63) JOSEPH E. FORD, called as a witness on behalf of the Government;

* * * * *

(69) Q. When did you first meet Mr. Lennon? A. Approximately 1939 or '40, maybe before.

Q. Now, did there come a time when you employed Mr. Lennon in your tax service at the Abyssinian Baptist Church? A. That is right, sir.

Q. Now, before we go into that, sir, what sort of a tax service was this, what did you do? A. Income tax.

Q. You prepared tax returns for clients that came to you, is that right? (70) A. That is right.

Q. You say there came a time when you did employ Mr. Lennon to work for you in the tax service, is that right? A. That is right, sir.

Q. Do you recall when that was? A. Approximately 1951.

Q. 1951? A. '41, I am sorry.

Q. How long did he continue in your employ? A. Until I left, 1951.

Q. What sort of services did Mr. Lennon perform as your employee? A. He was an interviewer and bookkeeper.

Q. When you say he was an interviewer, what do you mean by that? A. He interviewed the clients as they came in, got information from them.

The Court: What would you be doing for these clients? Who were these clients? What did you do for them in this?

The Witness: Make out their tax returns.

The Court: People would come to you and want you to make out their tax returns for them?

The Witness: That is right, sir.

(71) The Court: They provided you with data and information and you would do the work of preparing the return, is that right?

The Witness: That is right.

The Court: And then did you get any fees for doing that?

The Witness: I did, sir.

Q. Now, did Mr. Lennon prepare any tax returns himself? A. No, he did not.

Q. You were the one who prepared the return, is that right? A. I did.

Q. You had mentioned that he acted as your bookkeeper. What did he do in that function? A. He collected the fees, he kept the books.

Q. Now, did you pay Mr. Lennon for his services? A. I did.

Q. Did you have any set figure that you paid him each year? A. I did not.

Q. How was the amount paid arrived at? A. According to the amount that I took in.

Q. Now, did you pay Mr. Lennon by check or by cash? A. I paid Mr. Lennon by check every year but one.

(Government's Exhibits 7, 8, 9 and 10 marked for identification.)

(72) Q. Mr. Ford, I show you Government's Exhibit 9 for identification and ask that you carefully examine it and state whether you are able to identify the document. A. Yes.

Q. What is that? A. This is a check in payment for service rendered.

Mr. Feldman: I object to that, if your Honor please, reading from a document not in evidence.

The Court: I did not ask what the document said. He was asked what the document was. Your objection is overruled.

What is the document?

Q. What is it? A. It is a check in payment to Mr. Lennon for service——

Mr. Feldman: Your Honor, that is what I object to. It is a check, canceled check or uncanceled check.

The Court: Overruled.

Q. For what year is that? A. This is for 1949.

Mr. Feldman: Exception, your Honor.

Q. Do you know how much you paid Mr. Lennon for his services for the year 1949? A. $1600.

(73) Q. Now, is this the check that you paid Mr. Lennon for his services? A. That is right.

The Court: Who is the check payable to?

The Witness: Mr. Lennon, Acy Lennon.

The Court: What is the date of the check?

The Witness: March 18, 1949.

Mr. Bolan: I offer this in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: Certainly, your Honor. The witness has testified that this is the check——

The Court: Do you object to it?

Mr. Feldman: I do.

The Court: On what basis?

Mr. Feldman: The witness has testified that this is a check which he gave to Mr. Lennon, but the back of the check quite clearly shows——

Mr. Bolan: Your Honor, I object.

The Court: No. What is the basis of your objection? If he says he gave that check to Mr. Lennon why isn't it relevant? You can cross-examine him and make any argument about it. But why isn't it relevant?

Mr. Feldman: Because, your Honor, I think (74) that it would be prejudicial—may I see the Court at the bench? I don't like to make this——

The Court: No.

Mr. Feldman: I can explain the objection a little better there and then perhaps save the Court's time, because there are other checks that will come in.

The Court: Is it your objection that it is irrelevant?

Mr. Feldman: Irrelevant, your Honor.

The Court: Let me look at it.

Mr. Feldman: And I draw the Court's attention to the back of the check.

The Court: Objection overruled. The check will be received in evidence.

We have now approached adjournment time. We will adjourn until 2 o'clock this afternoon.

Don't discuss the case, ladies and gentlemen.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Feldman: Your Honor will note my exception.

(Recess until 2 p.m.)

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(75) AFTERNOON SESSION

JOSEPH E. FORD, resumed.

The Court: You may proceed.

Direct Examination Continued by Mr. Bolan:

Q. Mr. Ford, you testified this morning, did you not, that you paid Mr. Lennon $1600 by check for his services for the year 1949? A. That is right, sir.

Q. And did you pay Mr. Lennon for services rendered for the year 1950? A. I did, sir.

Q. And did you pay him by cash or by check? A. By check.

Q. I show you Government's Exhibit 10 for identification and ask you if you recognize these documents. A. Yes, I do.

Q. What are they? A. These are for services rendered by Mr. Lennon to me.

Mr. Feldman: Same objection, your Honor, and I ask that the answer be stricken. It is either a check or is not.

The Court: As I understand the witness's answer, he says this is what he gave Mr. Lennon in payment for his services. The objection is overruled.

(76) You may cross-examine him, of course, on it.

Q. These two checks are checks that you paid Mr. Lennon for his services rendered to you in 1950, is that correct? A. That is correct.

Mr. Bolan: I offer these checks in evidence, your Honor.

The Court: Any objection?

Mr. Feldman: May I see them, your Honor? Until I see them, I don't know.

(Mr. Bolan hands checks to Mr. Feldman.)

Mr. Feldman: Your Honor, same objection, in view of the endorsements on the back, as these are not probative or competent or relevant as showing payment by the witness.

The Court: The objection is overruled.

Mr. Feldman: Exception.

Your Honor, may I see these for a moment again, please?

Mr. Bolan: Yes (handing to Mr. Feldman).

(Government's Exhibit 10 for identification received in evidence.)

The Court: Go ahead, Mr. Bolan.

Q. Mr. Ford, did Mr. Lennon cash these checks, (77) the three checks which you described in your testimony?

Mr. Feldman: Objection, if your Honor please. May we now, in view of the fact that Mr. Ford is a Government witness, may we have a cessation of leading questions to the witness?

The Court: You gave those checks to Mr. Lennon, did you?

The Witness: Yes, your Honor.

The Court: Were they cashed?

The Witness: They were cashed.

The Court: All right.

Mr. Feldman: May I see them again for a moment, Mr. Bolan, please?

Mr. Bolan: Yes (handing to Mr. Feldman).

The Court: Next question, Mr. Bolan.

Q. Mr. Ford, I call your attention to the fact that on Government Exhibit 9, which is a check dated March 18, 1949, under what appears to be a signature Acy Lennon appears the signature which appears to be Joseph E. Ford, and that also on one of the checks that is a part of Government Exhibit 10, the check dated March 16, 1950, there appears the same situation, the signature appearing as Acy Lennon and under that Joseph E. Ford. Are you able to (78) explain, first of all, is that your signature on there? A. That is my signature, yes, sir.

Q. And do you know if that is Mr. Lennon's signature on each of these checks? A. That is Mr. Lennon's signature.

Q. Will you state why it is that your signature appears on those checks?

Mr. Feldman: Objected to, if your Honor please. It is there.

The Court: State the circumstances under which you placed your signature on these checks. I will allow that question.

Q. State the circumstances, Mr. Ford, surrounding the placing— A. That check is for $1600. Mr. Lennon had no account in my bank. I went with him to the bank with the check to cash the check. The teller requested me to sign underneath.

Q. That is so for the check in the amount of $1600 dated March 18, 1949, and for the check dated March 16, 1950, in the amount of $1600? A. That is right.

The Court: Did you see the cash then delivered to him?

(79) The Witness: I stood at the window with him.

The Court: Did you see the cash——

The Witness: I saw the cash.

Mr. Bolan: I would just like to read Government's Exhibit 10 to the jury, your Honor.

Government's Exhibit 10 consists of two checks, one dated March 16, 1950, payable to Acy Lennon in the amount of $1600, signed by Joseph E. Ford.

The other check is dated March 24, 1950, payable to Acy Leannon in the amount of $100 and signed by Joseph E. Ford.

The Court: And the reverse side, since you are reading it.

Mr. Bolan: The endorsements we have on Government's Exhibit 9, the March 18th check, 1949, the signatures reading Acy Lennon and Joseph E. Ford, and on the check for $1600 dated March 16, 1950, we——

have the same two signatures, Acy Lennon and Joseph E. Ford; for the $100 check dated March 24, 1950, we have the signature in writing Acy Lennon and underneath that in printing Acy Lennon and Early Lennon, 2364 Seventh Avenue, New York City.

Q. Now, Mr. Ford, did you pay Mr. Lennon for (80) services rendered you in your tax service for the year 1951? A. I did.

Q. Did you pay him by check or by cash? A. By cash.

Q. How much did you pay him? A. $1600.

Q. Is there anything which fixes the payment of that cash definitely in your mind? A. There is.

Q. Will you state what it is, please? A. I had had some domestic trouble. Mr. Lennon took care of all my cash during the day and each night he would turn the cash over to me. I took the cash home. I would take the cash home and would hide it to keep my wife from getting to it.

I awoke one night and found my wife had found out, my wife had found the hiding place and she was taking money out.

I found a new hiding place and it was in a large lamp, four-way lamp. I put the money in the lamp.

Sometime during the morning, 5 or 6 o'clock in the morning, the laundryman came. When he rang the bell I made the light in my room.

(81) My wife got up out of her bed, went to the door, took the laundry in and gave out the dirty laundry.

I left my light burning, went back to sleep. I awoke with the room full of smoke and I knew my money was on fire.

I gathered up the money, put it in a newspaper and took it to my bank the next morning. My bank gave me all new money for it, cash. I had that cash and I asked Mr. Len-

non, when it came time to pay him, I said, "Mr. Lennon, do you want cash or do you want a check?"

He said, "I will take the cash," and I gave him the cash.

Q. You gave him $1600, is that right? A. That is right.

* * * * * *

(85) Q. Now, during the period from 1941 to 1951, when Mr. Lennon worked for you during income tax time, did you come in contact—how frequently did you come in contact with him? A. Almost daily.

(86) Q. Was there any particular reason why you came in contact with him daily? A. Mr. Lennon had another job in the church as recreational worker and I had my office there.

Q. You had your office in the same premises, is that right? A. The same.

Q. Was Mr. Lennon a friend of yours during this time? A. He was.

Q. What sort of friend? How would you describe him? A. I took him as my right-hand man. And he was right-hand man to the congressman.

Q. During this period of time did Mr. Lennon ever mention to you that he had any sons?

Mr. Feldman: Your Honor, I am going to object. And this is again the same sort of leading.

The Court: I will overrule that objection. Go ahead. Answer the question.

A. No, he did not.

Q. Has he ever mentioned to you that he had any sons? A. No, he has not.

Q. Now, during this period of time did you know Mrs. Lennon? A. Yes, I did.

Q. That is the wife of the defendant Lennon I am referring to? A. Yes.

(87) Q. Did you have any contact with Mrs. Lennon—what sort of contact did you have with Mrs. Lennon? A. Well, she worked in my political organization as an inspector of elections.

Q. How frequently would you see her? A. I saw her at least once or twice a week.

Q. Did she ever mention having any sons?

Mr. Feldman: Your Honor, the same objection.

The Court: Overruled.

A. No, she did not.

Mr. Feldman: Your Honor, may my exceptions be noted, without troubling to keep mouthing exceptions after each ruling by the Court?

The Court: Yes, sure.

Q. Did you ever visit the defendant's home? A. Yes, I have.

Q. Where was that home during the period 1941 to 1951? A. It was on Seventh Avenue, between 133rd and 134th Street, in Manhattan.

Q. How frequently did you visit the home? A. Once or twice a year.

Q. Was any mention ever made in that home of any sons of the defendant, or did you see any sons (88) in the home?

Mr. Feldman: Objected to, your Honor.

The Court: Overruled.

Q. Would you answer that question? A. What was the question?

Q. The question was—I will break it down into two questions.

Was there any mention made during your visits to the Lennon home of any sons of theirs? A. I didn't hear it.

Q. Did you see anybody who was referred to as a son of the Lennons? A. No, I did not.

* * * * * *

(91) Q. Do you recall what your net profit was for 1949? A. No, I don't.

Q. Approximately do you recall? A. Between 500 and 2,500.

Q. And that was so for the other two years, 1950 and 1951, is that correct? A. That is correct.

Q. Well, now, I take it that in at least one of those years the defendant Lennon made more out of the tax service than you did as the person who was in charge of the tax service, is that correct?

Mr. Feldman: Objected to, your Honor, as leading and calling for a conclusion.

The Court: I will sustain the objection to the question as leading. Just bring out the facts, Mr. Bolan.

(92) Mr. Bolan: All right.

The Court: Let the conclusions speak for themselves.

Mr. Bolan: All right.

Q. Did Mr. Lennon ever make during any one of those three years more from the tax service than you did? A. He did so for one or two years.

Q. Was there any particular reason why Mr. Lennon did make more than you did in any one year?

Mr. Feldman: Your Honor, I object as completely irrelevant.

The Court: Overruled.

A. Congressman Powell wanted me to take care of Mr. Lennon, the righthand man, and I wanted to see Lennon happy because he had a family.

Q. Did you have any other employees? A. I had other employees.

The Court: What family did Mr. Lennon have, as far as you know?

The Witness: As far as I know he had two daughters and a wife.

The Court: Two daughters and a wife?

The Witness: Yes.

(93) Mr. Bolan: I have no further questions at this time, your Honor.

The Court: You may cross-examine.

Mr. Feldman: May I take just a moment, your Honor?

The Foreman: Could we have an explanation of what the defense attorney means when he speaks of "exception," and what effect it would have on us?

The Court: Yes, I will be glad to explain that. It has no effect on the jury at all. When the attorney makes a point and I overrule it, he can say, "exception," which is simply an indication that he thinks he wants to preserve that as a basis for appeal. I mean the word "exception" means that the lawyer thinks the judge is wrong and if the case goes to the higher courts, of course, it is one of the things that he can argue in the higher courts, that is all. It is an indication in the record that it is something that

he excepts to, and that he thinks it is a ground for an appeal. That is all it means. It has no effect on the jury at all. Needless to say, as far as the jury is concerned, the Judge is right no matter how he rules. If I am wrong I will be corrected by (94) the Court of Appeals or the United States Supreme Court, but for the purposes of this trial I am right, and I have not been corrected as yet in any of my cases.

Mr. Feldman: With the Court's permission may I be excused for just one moment?

The Court: Yes.

The Court: Yes.

Cross-Examination by Mr. Feldman:

Q. Mr. Ford, I noticed that your recollection as to the net profits that you made from your tax service during the years 1949, '50 and '51 was not too precise. Can you give us, for instance, as to the year 1949, can you tell us exactly what your net profit was? A. No, I can't.

Q. Now, could you tell us what your net profit was in 1950? A. I am sorry, I can't.

Q. Could you tell it to us for 1951? A. I can tell you that it was approximately between 500 and 2,500.

Q. Right. And you made, as I understand it, between eight and $10,000 a year gross? A. Gross.

(95) Q. But at this moment testifying now do you recall whether it was 8,000, 8,500, 9,000, or what it was? A. No, I don't.

Q. For 1950? A. I am sorry, I don't.

Q. Would your answer be the same for the years 1949, 1950 and '51? A. It would be.

Q. It would be the same, would it not? A. Yes.

Q. However, you are an accountant, are you not? A. I am.

Q. And you have been an accountant for many years? A. That's right.

Q. And you kept records of your earnings? A. Yes, I did.

Q. And you kept records of your expenses? A. Yes, I did.

Q. And I presume that during the years 1949, '50 and '51 you filed income tax returns for those years? A. I did.

(96) Q. And in filing those income tax returns, Mr. Ford, did you take into account the earnings from your tax service? A. I did.

Q. And all your other earnings? A. I did.

Q. And did you take into account your expenses in running the tax service? A. Yes, I did.

Q. And did you take into account all of your other expenses? A. Yes, sir.

Q. And would your answers be the same for the years 1950 and '51? A. That's right, sir.

Q. So that actually——

Mr. Feldman: I will withdraw that.

Q. Let me ask you this, Mr. Ford:

If you had your income tax returns before you could tell us what your actual earnings were and what your actual expenses were? A. If I had I could.

Mr. Feldman: Will the Government be good enough to produce those income tax returns?

(97) The Court: Do you have them here?

Mr. Bolan: Your Honor, we have not been able to locate the 1950 tax return. We have been able to locate the 1949 and 1951 tax returns.

The Court: Of Mr. Ford.

Mr. Bolan: Of Mr. Ford.

The Court: What do you want to ask him about it, his gross income during that year?

Mr. Feldman: Yes, sir.

The Court: Show it to Mr. Ford and let the question be asked and see if he can refresh his recollection from those returns.

Mr. Bolan: This is 1951.

Mr. Feldman: Your Honor, May I make a suggestion, in view of the fact that 1950 is not still available but I presume it will be——

The Court: 1950?

Mr. Feldman: 1950, is that right?

Mr. Bolan: 1950 is missing, and I might point out, your Honor, that it took three days to locate the 1951 return I believe it was, and we are still looking for the 1950 return.

Mr. Feldman: In view of that, may we suspend with this line of examination for a few (38) minutes so we can have a cohesive story before the jury and go on with something else?

Mr. Bolan: Suspend with what?

Mr. Feldman: Until you produce the others.

The Court: On this line of questioning it seems to me that you may be able to develop it by one of these other returns, and then if the other return becomes necessary why, of course, you can continue your examination on that.

Q. Well, which return do you have before you, Mr. Ford? A. 1951.

Q. And who made out that return for you? A. I did.

Joseph E. Ford—for Government—Cross

Mr. Feldman: Do you have 1949, Mr. Bolan?

Mr. Bolan: Yes, I do.

Mr. Feldman: Suppose we work with that.

(Mr. Bolan hands document to Mr. Feldman.)

Mr. Feldman: May we have it marked for identification as being the document that the witness is examining, your Honor?

The Court: All right, mark it Defendant's Exhibit A for identification.

(Marked Defendant's Exhibit A for (99) identification.)

The Witness: This isn't complete.

Q. You mean there is something missing? A. There is a sheet missing here.

Q. Which sheet is missing? A. The C form.

Q. Which is the C form, Mr. Ford? A. That is where I am self-employed.

Q. You mean the statement of income from your business and so on? A. Yes.

Q. Was that form in the return when you filed it? A. Yes.

Q. How do you know? A. Because I filed it.

Q. Well, now, look at page 2 of the return. Do you know which page 2 is? A. Page 2 of the return?

Q. Yes. A. There is not anything on there.

Q. Nothing is written in? A. No.

Q. Is there something on the return?

(100) Mr. Bolan: I object.

Q. Is there any printing on page 2? A. Nothing.

Q. No printing at all? A. Nothing.

Q. Just an empty blank sheet of paper? A. That is right.

Q. With nothing on it at all? A. That is right.

Q. Is that the 1040 form by the way? A. That is right.

Q. Well, Mr. Ford, anywhere on that return is there a schedule to be filled in of income from business and expenses of business? A. That is on the C form. There should be a C form here.

Q. You mean it is a blank form? A. Yes.

Q. Will you hold it up so I can see just what you are referring to? A. There is nothing on this page, page 2.

Q. But all I asked you was if there was printing there. A. Oh, printing, sure, certainly.

(1961) Q. And is the form filled out at all, the printing on that page 2? A. No.

Q. Now, the printing on page 2 as an accountant, Mr. Ford, of how many years experience, sir? A. Beg pardon.

Q. How many years experience as an accountant? A. 34.

Q. Now, in your 34 years of experience, sir, in filling out Form 1040, for however long you filled them out, isn't that the place where you usually report your income from business? A. The Government has another form called C which I filled out and placed in here.

Q. And you say that is missing? A. It is missing.

Q. Do you have a copy of it? A. In my file home at the office.

Q. Wherever you have it? A. I don't think so. 1949, I don't think I would have.

Q. Did you make a copy of it? A. I only keep them about five years. Yes, I made a copy.

(1962) Q. And you threw it out? A. Evidently; after five years I don't keep them.

Q. Sir? A. After five years I don't keep them.

Q. You don't keep them after five years? A. Rarely.

Joseph E. Ford—for Government—Cross

Q. Now, this is the 1949 return, is that right? A. That is right.

Q. And that was filed in 1950, is that right, sir? A. That's right.

Q. And when for the first time were you interrogated by the Government concerning Mr. Lennon's affairs? A. About two weeks ago I think it was, about two weeks ago.

Q. The first time you ever told them anything about Mr. Lennon? A. Not the first time. The first time was when I was here in another matter.

Q. I didn't ask you what you were here on. A. I was questioned in the grand jury.

Q. Don't tell me that. Just answer my (103) questions, Mr. Ford, if you please.

The Court: What is your question?

Q. When for the first time were you interrogated by the Government concerning Mr. Lennon's affairs? A. About two years ago.

Q. That would be about 1954 or 1955? A. '54, I guess.

Q. '54? A. I think it was.

Q. And that was four years after you had filed the return? A. Yes.

Q. And that was within the five-year period then that you kept it, is that right? A. That is right.

Q. So that in 1954 when you were first interrogated by the Government concerning payments made by you to Mr. Lennon, you had a record of your business activities, did you not? A. That was not the question they asked.

Q. I didn't ask you what they asked, sir; I asked you whether or not in 1954 when you were first questioned by the Government you still had (104) available the record of your business activities. A. I have some form of record in my office now.

Q. Can you answer my question? Did you have that C form, a copy of the C form?

The Court: That was not the question previously asked.

Mr. Feldman: Then I apologize to the Court.

The Court: But you are asking this question now?

Mr. Feldman: Yes, sir.

Q. Did you have the C form, the copy of the C form in 1954 when you were first interrogated about Mr. Lennon by the Government? A. I don't know.

Q. Well, that was within the four-year period, wasn't it, between the time of filing and the time you were first interrogated? A. That is right.

Q. And you told us a moment ago that you keep your records for five years, is that right? A. That is right.

Q. And are you now telling us that you threw that out before the five-year period? (105) A. I don't know. I have some form of record in the office if you want to see it.

Q. Yes, will you be good enough to bring it in?

The Court: What record do you want?

Mr. Feldman: The record concerning Mr. Ford's business that would have appeared on the C form, the form that he filed.

The Court: You want to know if he got a copy of the C form, and whether it would give the information about his earnings from this tax consulting business in that year?

Mr. Feldman: That is right, and the deductions.

The Court: And any expenses.

Mr. Feldman: Yes, sir.

The Witness: I think I can answer that for you. Mr. Lennon was my bookkeeper. He kept the books and I still have those books.

Q. Where are they, sir? A. In my office.

Q. Are they available? A. They are available.

Q. And you can get them, can you not? (106) A. That is right.

Q. And are you willing to bring them in? A. That is right.

Q. Could you testify from them? A. Sure. They are Lennon's own handwriting.

Q. And if you brought those books in, sir, they would show, would they not, what you received? A. It would.

Q. And would they also show that you paid out? A. Well, I have checks, cancelled checks, showing what I paid out.

Q. But all I am asking you now is whether your books would show what you paid out. A. I don't know.

Q. Well, as an accountant, sir, did you keep a set of books for yourself showing your income and your own expenses? A. Yes, sir, I did.

Q. And where are those books? A. In my office.

Q. And are they available? A. They are.

Q. And what years do they cover? (107). A. I don't recall how far they go back.

Q. But they do go back quite a ways? A. Yes.

Q. And are they in regular ledger form, or cashbook form? A. Yes.

Q. So that by looking at those books you would be able to tell what you earned; that is, the money that you received and the money that you paid out? A. That is right.

Q. And are you willing to bring those in? A. Yes.

Q. And from those books, Mr. Ford, you can tell us, could you not, what entries you yourself made at the time the transactions were had? A. That is right.

Q. But sitting on the stand here at the moment can you recall the entires that appear in those books? A. The amounts?

Joseph E. Ford—for Government—Cross

Q. Yes, sir. A. Between eight and $10,000.

Q. But beyond that you can't go? A. No.

(108) Mr. Bolan: Your Honor, I would object to any request to bring in the books. The witness' recollection is clear that he recalls the income.

The Court: Overruled. If there is any question about it why I think he had better bring the books in, not to be turned over to the other side but so that he can have them here to refresh his recollection.

You intend to ask questions based upon those books?

Mr. Feldman: Certainly, sir.

(154) Q. May I ask you this, Mr. Ford: You have a 1949 tax return before you? A. That is right.

Q. Is that right? A. That is right.

(155) Q. And what do you show as your gross income in your 1949 return? I am afraid I asked you that before. A. $5,549.84.

Q. That was your total gross income, is that right? A. That is my net income.

Q. I asked you what was your gross income. A. I don't know what the gross is. It doesn't show here. I haven't got that sheet, but my net was $5,549.84.

Q. Can you give us any idea of your gross? A. I don't know.

Q. So the only income that you believe— A. Oh, between eight and $10,000.

Q. No, that was the gross income of your tax service, but you said you made between 500 and 2,500? A. That is right.

Q. After you paid all the expenses, is that right? A. That is right.

Q. I think you said you could not recall, but between 500 and 2,500, is that right? (156) A. That is right.

Q. The $5,000 figure was your salary from the Borough President's office, wasn't it? A. That is right.

Q. Isn't that right? A. That is right.

Q. And let me ask you you this. How much net taxable income did you show on that return? A. $5,549.84.

Q. And what tax did you pay? A. $372.

Q. Right. Now, Mr. Ford, will you be good enough to tell me this:

You had received 5,000 from the Borough President's office, is that right? A. Right.

Q. And what was the amount again, I am sorry? A. $5,549.84.

Q. $5,549.84? A. Yes.

Q. The $500 then was the difference between your Borough President's salary and the profit from your tax service? (157) A. That is right.

Q. Is that right? A. Yes, sir.

Q. So that in 1949 you only made $500 from the tax service? A. That is right.

Q. Is that right, sir? A. That is right.

Q. And on that money, Mr. Ford, that was the money that you had available to you for living, is that right?

Mr. Bolan: May I have it clear as to what money he is talking about?

Mr. Feldman: The $5,549, whatever it is.

The Court: Yes. Objection sustained to that. He said that was his net income. What is the next question?

Joseph E. Ford—for Government—Cross

Q. Well, Mr. Ford, would you be good enough to go to the first page of the return, the first page, and look at item No. 5. A. Yes.

Q. Do you have it? A. Yes, I do.

Q. It says there, "Did you receive any other income? Give details and on page 2," and under (158) the total here, do you see that— A. Yes.

Q. —what figure appear there? A. 500.

Q. $500? A. Yes.

Q. Go to page 2. A. I looked at page 2 before.

Q. And there is nothing there? A. Nothing there.

Q. Now, Mr. Ford——

The Court: He says that is the sheet that is missing.

Mr. Feldman: He said C-2 is missing.

The Court: C-2, which is the detailed form for that.

Q. Now, in other words, although you are an accountant you never filled out the data which is required by the Government to show them how you arrive at the $500, is that right?

Mr. Bolan: I object, your Honor.

The Court: Objection sustained.

Q. Well, looking at page 2, do you see a place in there for your gross business, the gross business that you did? (159) A. Yes, I see that.

Q. Did you fill that in? A. I think that is all on another form, the C form.

Q. The C form? A. Yes.

Q. So you didn't fill in page 2 at all? A. The C form takes the place of page 2.

Joseph E. Ford—for Government—Cross

Q. The 1950 return is missing, is that right, Mr. Ford? A. I don't know. I don't have it.

Q. Do you have 1951?

Mr. Bolan: The Government does have 1951 but Mr. Ford does not have it.

Mr. Feldman: That is what I mean.

Mr. Bolan: Will you mark this for identification, plea e, as defendant's exhibit? The defendant asked for it.

(Marked Defendant's Exhibit B for identification.)

Q. You have the 1949 return in front of you and you have the 1951 return in front of you, is that right, Mr. Ford? A. That is right.

Q. Now, isn't it a fact, Mr. Ford, that there (160) was no C form in 1949, that it first came into effect in 1950 and 1951? A. The Government required me to file it.

Q. And did you file it? A. Yes.

Q. Did you always file every form that the Government required you to file? A. I think so, yes.

Q. As I recall it, I think you told us that Mr. Lennon was employed by you? A. That is right.

Q. Did you file the W-2 form for him? A. I did not.

Q. Did you file the 1099 form for him? A. I did not.

Q. You know what the 1099 form is? A. Yes.

Q. What is the 1099 form? A. The 1099 form is the form for reporting the salaries of employees.

Q. If their salaries are more than $600? A. That is right.

Q. But you paid Mr. Lennon more than $600? A. No—yes, I did.

(161) Q. And you did not file a form for him? A. No.

Q. And you did not file the W-2 for for him? A. No, I did not.

Q. Where, Mr. Ford, in your 1951 return did you show the salary that you paid Mr. Lennon? A. Line 11.

Q. What does it say there, sir? A. Salaries and wages.

Q. Yes, how much? A. $2,500.

Q. Now, what were the total salaries that you paid to all of your employees? Isn't that the total salaries? A. That is right.

Q. And included among that, or among them, as I understand your story, is the $1,600 that you paid Mr. Lennon? A. That is right.

Q. And $900 that you paid others? A. Yes.

Q. And you had a gross income of between eight and $10,000 a year in that business? A. Gross $10,000.

(162) Q. $10,000 gross that year, is that right? A. That is right.

Q. And you paid out $2,500 for your employees? A. That is right.

Q. What other expenses did you have? A. I had rent.

Q. How much? A. $2,400.

Q. To whom did you pay that rent in 1951? A. 1951?

Q. Yes. A. I gave that to Clausner.

Q. Clausner? A. Yes, at 222 West 145th Street.

Q. We are talking about the tax service.

Mr. Bolan: Your Honor, I think we are now going into Mr. Ford's personal income tax return. The issue, sir, is the amount of money that Mr Ford paid Mr. Lennon.

The Court: I know, and if there is any question about whether he paid it to him, but I am going to allow a certain amount of cross-examination. Go on but do not go too far.

Joseph E. Ford—for Government—Cross

Q. You were at the Abysinnian Baptist Church (163) with your tax service, weren't you?- A. I left in August.

Q. I know that, but to whom did you pay the rent? A. The 1951 tax filed in March, 1952.

Q. Whom did you pay it to in 1951? A. Clausner.

Q. K-l— A. C-l-a-u-s-n-e-r.

Q. C-l-a-u-s-n-e-r? A. Yes.

Q. And you paid $2,500 for rent? A. No, I think $2,400.

Q. $2,400 for rent? A. Yes.

Q. For what period, sir?

The Court: I do not see that that is material.

Mr. Feldman: Well, I withdraw it.

Q. Isn't it a fact, Mr. Ford, that you had free rent at the Abysinnian Baptist Church? A. This is at 222 West 145th Street.

Q. And that is the rent that you paid there? A. That is right.

Q. But in 1950 did you have any similar rental expense?

(164) Mr. Bolan: Are we talking now about 1950 or 1951?

Mr. Feldman: We are talking about both years.

The Court: Wait a minute. Let us pin it down to one or the other.

What are you talking about now, whether he had to pay rent when he was at the Abysinnian Baptist Church?

Mr. Feldman: That is right, sir.

The Witness: No rent.

Q. No rent at all? A. At the Abysinnian, no.

Q. Let us go to 1950 then, and you had no rent? A. That is right.

Joseph E. Ford—for Government—Cross

Q. Did you have the same number of employees? A. I don't know.

Q. About how much did you pay out in 1950 to employees? A. I don't know.

Q. Go to the year 1951, then. A. Sir?

Q. You had this rent expense, is that right? A. That was an additional expense.

(165) Q. That was an additional expense that you did not have in 1950, isn't that right? A. That is right.

Q. Isn't that right? A. That is right.

Q. What other expenses did you have?

The Court: What is the relevance of this? What are you trying to establish by that?

Mr. Feldman: Well, I would be perfectly happy to tell the Court out of the hearing of the witness.

The Court: Well, we can't go on forever.

Mr. Feldman: I have no intention of doing that, your Honor.

The Court: Well, then, I am not going to allow a complete audit of this man's return unless it has some relevancy to his testimony, and what was paid to Lennon, of course, I will allow that, but this trial certainly is not going to be permitted to last for several weeks, although it probably will if we don't keep it within limits.

Mr. Feldman: Your Honor will recall Mr. Ford's testimony on direct that Mr. Lennon's salary or compensation was based upon the income of his (166) business.

The Court: That is right.

Mr. Feldman: And what I am trying to do, since the 1950 return is missing, I would like very much to go on rather than delay matters, and I am trying to establish what that income was, and how he com-

puted Mr. Lennon's salary, and whether or not in fact these payments that he claims to have made to Mr. Lennon were payments to Mr. Lennon or merely cash manipulations on the part of this particular witness.

The Court: Well, why not go to that point, then? I do not quite see how itemizing his list of expenses is going to get us anywhere.

Mr. Feldman: Your Honor ——

The Court: However, I am not going to cut you off on anything that is irrelevant. You go ahead and ask the question, but I am a little afraid that some of these questions that you are asking now have no relevancy. However, if you can put your finger on the point, any point that is in issue in the case, of course, I will permit you to ask questions about it.

(167) Mr. Feldman: If there is a question that has been asked of the witness, Mr. Reporter, not answered, I will withdraw it so that you need not go back.

Q. Mr. Ford, using 1951 as the basis, you had a rental expense in 1951 which you did not have in 1950, is that right? A. That is right.

Q. Now, did you during the years 1949, '50 and '51 have employees other than Mr. Lennon working in the tax service? A. I did.

Q. About how many of such other employees did you have? A. I don't remember.

Q. In any year? A. I don't remember any year.

Q. Mr. Ford, how much did you pay these other employees? A. Very small.

Q. You mean they were small employees or did you pay them small amounts? A. Small amounts.

Joseph E. Ford—for Government—Cross

Q. Small amounts? A. Yes.

(168) Q. Well, how small? A. I don't remember.

The Court: What were the other employees? What did they do?

The Witness: Clerks.

The Court: Clerks?

The Witness: Yes, copying.

The Court: Copying?

The Witness: Yes, no typing.

The Court: Copying?

The Witness: Copying by hand.

Q. You remember, Mr. Ford, that you told us that you made out all the returns, is that right? A. I made them all out.

Q. All of them? A. Yes.

Q. In 1949? A. Yes.

Q. 1950? A. Right.

Q. 1951, is that right? A. All.

Q. Did you have any accountant working for you and making out returns? A. I don't think so.

Q. Not a single one? A. I don't think so. I don't recall any.

Q. Did you make out Mr. Lennon's return at the (169) same time? A. I don't recall. I don't think I did.

Q. You don't recall a single accountant working for you? A. I don't recall any.

Q. Who is Sonny White? A. Sonny White worked for me also.

Q. Doing what? A. Working as the others.

Q. Doing what, sir? A. As the others.

Q. Did he make out tax returns? A. He might have.

(170) Q. Who is Elmer Collins? A. He never worked for me.

Q. Are you sure? A. Positive.

Q. Any other accountants like Sonny White?

The Court: Wait a minute. He has not said that Sonny White was an accountant.

Q. Did Sonny White make out tax returns? A. I don't remember.

The Court: Is Sonny White an accountant?

The Witness: I don't think he was.

Q. Were there others like Sonny White in your organization? A. No.

Q. He was the only one? A. Mostly. I had a woman. They were women. I think Sonny White—I know he was there one or two years.

Q. Do you recall the name Payne? A. Who?

Q. Payne? A. No. I don't. He never worked for me.

Q. You don't recall that name at all? A. Pardon?

Q. You don't recall that name at all? A. He didn't work for me.

Q. When you say "he didn't work for you," let me (171) ask you this, Mr. Ford: you were busy being a district leader, weren't you? A. Yes, sir.

Q. Sir? A. Yes.

Q. And you were working down at the Borough President's office in your secret job during the day, weren't you? A. That is right.

Q. And at night you were out attending to your political functions? A. That is right.

Q. When did you make out the tax returns? A. Days.

Q. What days? A. Well, I just got to explain to you that I didn't have to go to the Borough President's office unless I wanted to.

Joseph E. Ford—for Government—Cross

Q. I see. Did anybody help you make out tax returns? A. No.

Q. Nobody at all? A. No.

Q. Did it all yourself? A. Yes.

Q. Acy Lennon was a friend of yours? A. Yes.

Q. Did you do most of them? A. I said I did most of them. I don't recall anybody making out any.

(172) Q. Now, which is it, either you made them all out of you didn't. A. I think I did.

Q. And is that the testimony that you want this jury to believe? A. Yes.

The Court: He has answered the question.

Mr. Feldman: Fine.

Q. Mr. Lennon was in this tax service with you? A. Yes, he was.

Q. You said Mr. Lennon never made out any tax returns. A. No, he didn't.

Q. Who made out his tax returns? A. I don't know.

Q. Didn't you do it? A. No.

Q. You are certain? A. Pretty certain.

Q. Well, are you certain or uncertain? Which is it? If you don't recall, tell us so. A. I don't think I did.

Q. You don't think you did? A. No.

Q. Now, you had Mr. Lennon or you paid Mr. Lennon, as I understand your testimony, you paid him $1600, is that right, sir? A. That is right.

Q. And you paid Mr. White; is that right? (173) A. He didn't work full time; he worked part time.

Q. But he did work? A. Yes, he worked.

Q. Did he get paid? A. Oh, sure, everybody got paid.

Q. Who paid them? A. I did by check.

Q. All of them? A. Most of them I paid by check.

Q. All the others by check, is that right? A. That is right.

Q. Now, as of this moment can you recall any of the names of the people who worked for you in 1949, 1950, 1951, other than Mr. Lennon and Mr. White whom I told you about? A. No, but may I say this——

Q. Can you or can't you?

The Court: He says no. Go ahead.

The Witness: Mr. Lennon was in charge of the office. He hired these girls to work. He saw that they were paid. Mr. Lennon paid cash. I gave him checks for whatever it was, and maybe he can recall.

Q. And all that I understand you to say you left up to Mr. Lennon? A. That is right.

Q. And as people came in for the service they usually paid for it, didn't they? (174) A. I beg pardon?

Q. As people came in to take advantage of your service they usually paid for it? A. That is right.

Q. What did you do with the money that you received, this eight or ten thousand dollars during the course of 1949? Did you bank it? A. I banked it.

Q. What bank? A. Several banks.

Q. Which ones?

The Court: What difference does that make in this case?

Mr. Feldman: The difference that it makes is this, your Honor, that I think as we go on we will be able to show that didn't happen, and the questions go to the question of credibility of this man.

The Witness: I have my bank books.

The Court: All right. What banks did you bank in?

Joseph E. Ford—for Government—Cross

The Witness: Manufacturers Trust, Chase National Bank, Modern Industrial, and there were some others that I don't remember now.

Q. Manufacturers Trust? A. Corn Exchange, Chase National Bank.

(175) Q. All over the place? A. All over the place.

Q. And as you got the money in you put it into the particular bank, is that right? A. Yes.

Q. Let us go to 1950 as an illustration, Mr. Ford, or 1949; I am sorry. In 1949 were you under a contempt proceeding because you had not paid back alimony? A. In 1949?

Q. Yes. A. I might have been.

Q. You don't recall, is that right? A. No, I don't.

Q. And around income tax time—incidentally, who was Lurline's lawyer? Do you recall his name? A. Mr. Berman.

Q. Mr. Berman is the the name? A. Yes.

Q. You remember that? A. I do.

Q. And he was always pressing you for money, wasn't he? A. Always.

Q. And in pressing you for money did you always pay him? A. Yes, I did.

Q. Well, then, how many contempt proceedings were you subjected to, do you recall? A. How many?

(176) Q. Yes. A. No, I don't.

Q. Did you ever pay the back alimony without being threatened with jail?

The Court: What difference does that make?

Mr. Feldman: I think we will be able to connect it, your Honor.

The Witness: I never was that far behind.

Q. Do you remember going to jail on two occasions? A. Only $50.

The Court: Was that back alimony you said?

The Witness: $50, sir.

The Court: When was that?

The Witness: About 1949.

Q. Did you ever reach a point where you owed Lurline as much as $800? A. Oh, that is 1953 and 1954.

Q. But not before then? A. No.

Q. Are you certain? A. Positive.

Mr. Feldman: May we have the files from the County Clerk's office, please?

(Clerk hands documents to Mr. Feldman)

Q. Let me ask you this, if I may, Mr. Ford: Did you ever under oath swear before a court in any proceeding that the only income you had was (177) from your job? A. I don't remember.

Q. No recollection? A. No.

Q. Mr. Ford, in 1951, in January of 1951, you were still at the Abyssinian Baptist Church, weren't you, sir? A. I was.

Q. And you were running a tax service in January of 1951? A. Yes.

Q. That was before you left the church, wasn't it? A. That is right.

(179) Q. Let me ask you this, Mr. Ford: During 1949 and 1950 and 1951, during all of those three years, or any single one of them, was your salary garnisheed? A. Yes.

Q. By whom, sir? A. W & J Sloane.

Joseph E. Ford—for Government—Cross

Q. The people that you bought the $10,000 furniture from? A. Yes.

Q. That you said you paid for by cash or check? A. Yes, when I got paid, cash and check.

Mr. Bolan: I did not get that answer. I am sorry.

(Answer read)

Q. And how much did they garnishee your salary for at the Borough President's office? A. I don't remember, 10 per cent I guess.

Q. Sir? A. Ten per cent of my salary.

Q. Ten per cent of your salary it would have been? A. It could not have been more than that.

Q. What? A. It could not have been more than that.

Q. How do you know that? A. I think that that law so states.

Q. Are you familiar with it?

(180) The Court: Let us go on with something else.

Q. So we have this situation, then, in 1949 and '50 and 1951, do we not, Mr. Ford, in which you were in alimony difficulties with your wife, is that right? A. I don't know what you mean by in "alimony difficulties."

The Court: He has already testified about that and now let's not recapitulate. Let's go on.

Q. And W & J Sloane were pressing in on you for payment, and how much was the judgment that they had against you? A. I don't know.

Q. About $5,000? A. No, much less than that.

Joseph E. Ford—for Government—Cross

Q. $4,000? A. I don't remember, not too much, two or three thousand.

Q. Sir? A. It could not have been over two or three thousand dollars.

Q. Two or three thousand dollars? A. Yes.

Q. Would you recognize a judgment when you see one, Mr. Ford? A. I don't know.

Mr. Bolan: I object, your Honor.

(181) Q. Would this refresh your recollection as to the amount of the judgment, and I draw your attention to this court decree——

The Court: The only question is whether it refreshes your recollection. Does it?

The Witness: Well, it does not.

Q. It does not refresh your recollection at all? A. No, it does not.

The Court: Let me see the file.

Mr. Feldman: Yes, your Honor (handing to Court).

The Court: What is your question?

Mr. Feldman: The question, your Honor, was whether or not the document which I showed the witness refreshes his recollection as to the amount of the judgment with W & J Sloane, of that W & J Sloane obtained against him.

The Court: Do you know what is the amount of the judgment?

The Witness: I said two or three thousand dollars. I don't remember, your Honor, but evidently some fees have been added to that which I don't know about. I don't remember.

Joseph E. Ford—for Government—Cross

Q. Well, this shows that the amount claimed in the complaint was $3,852, and the final (182) judgment with interest, plus marshal fees and all that, was $4,061.63.

The Witness: I said about three thousand, your Honor.

The Court: All right.

Mr. Feldman: Now, may I see Exhibit 9, please, Mr. Bolan?

(Mr. Bolan hands document to Mr. Feldman.)

Mr. Feldman: And can I have 10 and 11?

Mr. Bolan: Yes (handing documents to Mr. Feldman.)

Q. Acy Lennon was your right-hand man, was he, during the time you were on friendly terms with him? A. I think he was. I trusted him.

Q. Yes. You knew his affairs, didn't you? A. Pardon?

Q. You knew his affairs, didn't you? A. No, I won't say I did.

Q. Well, you knew what he was doing? You knew he had a luncheonette, and you testified on direct examination about that, didn't you?

The Court: What is the question now? You asked him about three questions.

Mr. Feldman: I will withdraw all of them.

(183) Q. You knew Acy had a luncheonette, didn't you? A. In prior years, yes.

Q. We are talking about the years 1949, '50 and 1951. A. He did not have the luncheonette in 1949.

Q. Did he have the luncheonette in 1950? A. I don't remember what year it was.

Joseph E. Ford—for Government—Cross.

Q. A candy store, something like that? A. A candy store.

Q. Now, is that the distinction you make between the luncheonette and the candy store? A. Wouldn't you think so?

The Court: Ask a question now.

Q. That is a place called Tiny's, wasn't it? A. I don't know what the place was called.

Q. Didn't you testify on direct examination that the place was called Tiny's?

Mr. Bolan: He did not, your Honor.

The Court: No, you are confusing it. I think that was referred to in the opening.

Mr. Feldman: That may very well be, your Honor. If it was, I apologize.

The Court: All right, go ahead: next question.

Q. Now, did you know that Mr. Lennon had a bank account? A. I believe I did.

(184) Was that a bank account for his candy store? A. I don't know.

Q. But you knew that he had a bank account, is that right? A. Yes, I did.

Q. And the check that you gave him, Exhibit 9 I believe it is, was dated March 18, 1949, is that right? A. May I see it?

Q. Surely (handing to witness). A. March 18, 1949.

Q. Now, can you by looking at that check, Mr. Ford, recall how many days prior to March 18, 1949, you made a deposit to cover that check? A. Yes, I made a deposit. I was making deposits daily.

Q. I understand, but was there any single large deposit immediately prior to that day? A. Yes, I think so.

Joseph E. Ford—for Government—Cross

Q. How much? A. I don't know.

Q. Was it $3,000 or $2,000? A. It may have been.

Q. And at that time, Mr. Ford, you were in financial difficulties, weren't you? A. I didn't say I was.

(185) Q. Well, I am asking you. A. I don't think I have ever been so much in financial difficulties.

(187) Q. Mr. Ford, on your direct examination you told us a story about certain check transactions that you had with Mr. Lennon, a cash transaction that you had, a transaction with a Mr. Kent, is that right?

The Court: He had, all right. Now ask him another question.

Q. Now, did you testify before the grand jury as to any of these transactions at all? A. I don't think so.

Q. Did you ever testify before the grand jury with respect to Mr. Lennon? A. Yes.

Q. And about how long did it take you to testify before the grand jury, do you recall? A. About two minutes.

Q. Now, how do you now recall that it was two minutes? A. Well, I remember.

Q. You just remember it? A. Now I remember it was about two minutes, two or three questions.

(188) Q. And was the subject of your testimony concerning Mr. Lennon any of the testimony that you have given here? A. I don't get the question.

Q. Any of the testimony that you have given here today?

The Court: Read the question, Mr. Reporter.

(Question read)

A. Well, I would say that they asked me about these checks.

Q. Do you recall telling us a moment ago that there was nothing like that in the testimony?

The Court: No, I don't think he said that.

Mr. Feldman: If I misunderstood the witness, I will apologize.

The Court: I think you had a broad question there about Mr. Kent and a lot of other things.

Q. Well, you testified, Mr. Ford, before the grand jury concerning the checks, is that right? A. Just the checks.

Q. Nothing else? A. Nothing else.

Q. And in testifying concerning the checks, Mr. Ford, about how long did it take you to testify? A. About two minutes.

(189) Q. All you did was come in and tell the checks you had given to Acy? A. They asked me what these checks represented and I told them.

Q. For the work that he did for you, is that right? A. That is right.

Q. Now, tell me this: How did the Government get the checks, or did you bring them? A. They came to my office to get them.

Q. Sir? A. Somebody came to my office to get them while I was not there.

Q. Well, did you know that it was from the Government? A. Yes, they gave me a receipt.

Q. They gave you a receipt? A. Gave the man a receipt.

Q. You gave the man a receipt? A. The Government, the man.

Q. I see, the Government man left a receipt for it? A. That is right.

Vivian Della Lennon—for Government—Direct

(213) New York, October 8, 1956,
10:30 o'clock a.m.

TRIAL RESUMED.

The Court: Will the witness, Mr. Ford, return to the stand? Is he here?

Mr. Bolan: Just a minute. Excuse me, your Honor. There is a witness from out of town and Mr. Feldman has agreed that we might put her on.

The Court: You want to put her on out of turn? Sure, go ahead.

Mr. Bolan: Vivian Lennon.

VIVIAN DELLA LENNON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bolan:

Q. Where do you live, Miss Lennon? A. 112——

The Court: Will you keep your voice up because everybody has to hear you.

A. 112-50 Northern Boulevard, Corona, Long (214) Island.

Q. And that is the Dorie Miller Apartment project, is it? A. Yes, it is.

Q. When were you born, Miss Lennon? A. September 30, 1934.

Q. Now, prior—how long have you been living at Dorie Miller? A. I would say approximately about two years and a half.

Q. Prior to that where did you live? A. 2276 Seventh Avenue, 134th Street.

Q. And how long did you live at that address? A. I would say approximately ten years.

Q. With whom do you live at Dorie Miller? A. My mother and my father and my sister.

Q. And your father is Mr. Acy Lennon, the defendant in this case, is that right? A. That is right.

Q. And what is your mother's name? A. Beatrice Lennon.

Q. What is your sister's name? A. Barbara Lennon.

Q. Do you have any other sisters? (215) Not to my knowledge.

Q. Do you have any brothers? A. Well, not to my—not live with us, no; but it has been rumored that I have brothers.

The Court: What was that you said? I couldn't hear.

The Witness: I said not—we don't have any brothers that live with us, but it has been rumored that my father has two sons.

The Court: It has been——

Q. When did you first hear this rumor? A. I can't recall the date. When I was young, a young girl, I should say.

Q. Now, you have appeared before the grand jury, have you not, Miss Lennon? A. Yes, I did.

Q. Do you recall being asked whether you ever had any brothers? A. Yes, I do.

Q. Do you recall what your answer was? A. I believe I said not to my knowledge.

Q. You also were questioned by the Internal Revenue Department under oath, is that right? A. I was ques-

tioned, I believe, only once by the (216) Internal Revenue unit.

Q. And you were questioned once before the grand jury, you recall that? A. Oh, yes.

Q. And you also were questioned once by the Internal Revenue? A. Yes.

Q. And do you recall being asked that same question as to whether you ever had any brothers? A. No, sir, I don't recall being asked that before the grand jury, not that I recall.

The Court: What was that?

The Witness: I don't recall being asked that question before the grand jury.

The Court: I thought you said a minute ago that you had been questioned before the grand jury.

The Witness: Yes, but I said the first time when I was questioned in the room I believe I was asked that question.

The Court: Were the members of the grand jury sitting there?

The Witness: No, it was a small room.

Q. Well, do you remember what you were questioned about in the grand jury?

The Court: This is while you were a witness (217) before the grand jury?

The Witness: My address, and what I was doing at present, where did I live, who I lived with. I think that is all, as far as I remember the questions.

Q. Now, you had been questioned as to whether you ever had any brothers before by the Government?

Mr. Feldman: I object. It is a question based on a state of facts not in evidence.

The Court: The witness said she had been questioned. Overruled.

Q. Is that right, Miss Lennon? A. I have been asked if I had any brothers living, did I know any brothers.

Q. Did you ever tell the Government that you heard a rumor that you did have brothers? A. No, I didn't.

The Court: Is this the first time you ever said to anybody that you heard these rumors? Is this the first time you said that?

The Witness: Yes, I mean in this position I am here.

The Court: All right.

Q. Now, what education have you had, Miss Lennon? A. I have been to Public School 119, and I have (218) been to junior high school.

The Court: Could you speak a little louder? I am afraid some of the jurors can't hear what you are saying.

A. I attended Public School 119, attended Junior High School 96, I attended Julia Richmond High School, I also took other courses at Rhodes——

The Court: Preparatory?

The Witness: Prep School. I took non-matricular courses at City College; I attended South Carolina State College for three years, and at present I am a student at the American State College.

Q. Had you ever worked for your father? A. Yes, I have helped my father.

Q. When was that? A. It was following my graduation from high school.

Q. That was January, 1952, is that right? A. Yes.

Q. Now, what sort of work did you do for your father? A. Well, at that particular time I was attending night classes also, and I was going to the church to help him out.

(219) Q. At the Abyssinian Baptist Church? A. Yes, that is right.

Q. To help him out with what? A. With this tax business. I mean tax forms.

Q. He ran a tax business in the Abyssinian Baptist Church in 1952, is that right?

Mr. Feldman: May we have the dates, if your Honor pleases?

The Court: The date was put in the question.

Mr. Feldman: May we have the dates to which Mr. Bolan is referring?

The Court: No, you can bring it out on cross examination. The date was put in there.

Do you want that question repeated?

The Witness: Yes, sir.

The Court: Please read the question, Mr. Reporter.

(Question read.)

A. Yes, the month following my graduation from high school, and that would be January, February and March of 1952, or February and March. I was in school until the end of January.

Q. What sort of work did you do for your father? A. Sometimes I would answer the phone. I would (220) only

stay a couple of hours and sometimes I would copy income tax forms.

Q. And when you say "copy income tax forms," what do you mean by that? A. Well, after they were prepared and finished, I would make pencil copies.

Q. Now, was anyone else working for your father at that time? A. Yes, I believe so, and a certified public accountant.

Q. Did he have more than one person working for him apart from yourself? A. At times there were two.

Q. Did you ever collect any moneys from any people? A. Well, if someone would pay, or usually if they wanted to leave some money for my father, they would give it to me and I would write it on a slip of paper and place it on the desk for him when he came in the office.

Q. Your father was the boss of this business, is that right? A. Yes, I would call him that, yes.

Q. Everybody in the Abyssinian office worked for (221) your father in that tax service, is that right? A. You mean like what I was doing for him?

Q. Yes. A. Yes.

Q. In the tax service? A. Yes, to my knowledge.

Q. Now, this year 1952 was the only year that you worked for your father in that tax service? A. Yes.

Q. Have you ever seen anyone who was told here was your brother? A. No.

Q. Has your father lived with your mother as far back as you can remember? A. Yes.

Q. And your sister and you have lived with your father and mother as far back as you can remember, is that right? A. Yes.

Q. Have any other people, any other children, lived with you and your sister and your father and mother? A. At one time we had a sister-in-law who stayed with her child, but I mean other than that, no.

Mr. Bolan: I have no further questions at this point.

Vivian Della Lynnon—for Government—Cross

(222) *Cross-Examination by Mr. Feldman:*

Q. May I call you Vivian? A. Yes.

Q. Vivian, up until this moment have you ever discussed this case with me? A. No, I haven't.

Q. Do you know who I am? A. I know I can't repeat the name because I don't remember it, but I can remember meeting you once, only once.

Q. Where was that? A. Upstairs. I think it was in Mr. Bolan's office or one of the reception rooms.

Q. And I came by and told you that there was going to be no trial that day? A. Yes.

Q. Is that right? A. You told us on that day.

Q. And you waited for Mr. Bolan? A. Mr. Emanuel would tell me what to do.

Q. Mr. Emanuel is the gentleman sitting here? A. Yes, in the brown suit.

Q. Now, Vivian, the only time that you worked for your father in the tax service was in 1952? A. Yes, the month following my graduation.

(223) Q. Can I ask you this, Vivian: At any time did anybody in the Government in any manner ever ask you whether or not your father had any illegitimate children? A. They didn't use that phrasing.

Q. Now, the first time, Vivian, that you heard about the existence of other brothers was about when, can you recall? A. I can't recall definitely. I don't remember the exact time.

Q. Would you say you were a young woman then? A. Yes, I was considerably younger.

Q. And you used the words "rumors," that you had heard rumors, is that right? A. Yes.

Q. And did other people come to you and state things to you about your father's illegitimate children? A. I have heard it, you know, by way of talk.

Q. That is what I mean. A. Yes.

Q. And did you discuss it with your father? A. No, I didn't.

Mr. Feldman: I have no further questions.

Re-direct Examination by Mr. Boland:

Q. Miss Lennon, have you discussed with any attorney the matter of your interrogation by the United (224) States Attorney? A. No, I haven't.

Q. Have you ever been represented by an attorney in any of your appearances before the United States Government? A. The first time I was questioned, I believe, I guess in the room upstairs, an attorney was present in the room.

Q. And what was his name? A. Jackson.

Q. Harrison Jackson? A. Yes.

Q. And he is also Congressman Powell's attorney, is he not? A. I couldn't say for sure now but I believe he once did work for Congressman Powell.

Q. And when you were questioned by the Internal Revenue Service prior to the time that you went before the grand jury, Mr. Harrison Jackson was present while you were questioned, was he not? A. Yes, he was.

Q. And he also accompanied you to the grand jury room, did he not? A. No, he did not.

Q. No, not in the room, but right up to the time he was waiting outside, is that right? (225) A. No, there were two separate occasions, and are you speaking of the same day?

Q. No, two separate occasions. A. No one accompanied me the second time.

Q. Do you remember being questioned in the grand jury as to who arrived at the court house with you? A. The grand jury; no, I don't remember.

Q. Perhaps I can refresh your recollection. A. Well, no, I came alone before the grand jury, because I was working last summer if I can recall, and I went to work and I told my boss that I would have to have, you know, the remainder of the day off, and if I can remember I came down by myself.

Q. Well, now, just to refresh your recollection, do you remember stating in the grand jury that you came down in an automobile with Mr. Jackson and Mr. William Lewis? A. I believe that—oh, wait a minute, wait a minute. I know that the first time I came down was when they had me up in the room. Let me see, it wasn't the same day or they were both on the same day and I came down in the car with Mr. Jackson and Mr. Lewis, and if I remember before the grand jury, that I remember, but what time I did ride down with Mr. Lewis and (226) Mr. Jackson.

Q. Well, can you recall what time when Mr. Jackson was sitting right there when you were questioned? A. Yes, that was the time I was upstairs in the small room.

Q. And the other time was when you went before the grand jury and when you came down in the automobile with Mr. Jackson and Mr. Lewis? A. What I am trying to say is that if it all happened in the same day I did come down in the car with Mr. Lewis and Mr. Jackson.

Q. Well, now, could this refresh your recollection, that you went to 253 Broadway on July 19th with Mr. Jackson? A. Yes, that was the building I think where they have the Roger Peet's store downstairs, or some sort of men's clothing store, yes.

Q. That was on July 19. Now, do you remember coming here in an automobile with Mr. Jackson to the grand jury on August 8th? A. I believe I came down with Mr. Jackson in the car on July 9th when he was present in the room with me I believe so. I know for sure one time but

I can't remember if it was the grand jury or the day he was (227) in the room with me.

Q. Well, would it refresh your recollection if I told you that you were asked in the grand jury room on August 8th whether you came down with anybody and that you answered Mr. Jackson and Mr. Lewis? A. Oh, if I said I did, I did then, I must have come down with Mr. Jackson and with Mr. Lewis, and I remember Mr. Jackson, yes, sir, but I can't remember Mr. Jackson bring me down the first time or not, but I do know that he brought me down one time; so if I said it in the grand jury room, it was that day, then it was that day then.

Q. Well, would it refresh your recollection also if I tell you—no, I withdraw that.

You have said that Mr. Jackson was sitting while you were being questioned on one time?

Mr. Feldman: Your Honor, this is in the nature of cross-examination, and this is the Government's own witness.

Mr. Bolan: I am attempting to refresh her recollection.

The Court: That is all right. She has said that. What is the next question?

Q. The next question is this: Did Mr. Jackson (228) discuss with you in any way the manner of your interrogation before the Internal Revenue Service or before the grand jury? A. No, he didn't.

Q. He didn't say a word to you about what might take place? A. No. I mean, he told me when I went to the grand jury, he informed me that I was going to go before the grand jury and not discuss in any matter, in any manner.

Joseph E. Ford—Recalled—for Government—Cross

Q. He has not discussed it with you since the last time you appeared—the time that you appeared before the grand jury? A. I haven't seen him since that time.

Mr. Bolan: I have no further questions.

The Court: You are excused.

Mr. Bolan: May the witness be released from the Government subpoena so she may return to school?

The Court: You don't need her, I take it?

Mr. Bolan: No, your Honor.

The Court: All right.

(Witness excused.)

The Court: Do you want Mr. Ford to come back now?

(229) Mr. Feldman: Yes, sir.

Joseph E. Ford resumed.

The Court: You may proceed, Mr. Feldman.

Cross-Examination continued by Mr. Feldman:

Q. Mr. Ford, do you recall that in your direct examination by Mr. Bolan you described Mr. Lennon as an interviewer and as a bookkeeper? A. That is right.

Q. Now, in referring to him as a bookkeeper were you trying to convey the impression that Mr. Lennon kept all of your books in all of your activities or just of the tax service? A. The tax service.

Q. Just the tax service. And what was the extent of Mr. Lennon's bookkeeping activities? A. He kept the records and took the cash, turned it over to me at night.

Q. When you say he kept the records, what records did he keep? A. Names, addresses, and then he took the information from them regarding their tax.

Q. You mean he interviewed the clients of your service, Mr. Ford? (230) A. That is right.

Q. And if they paid money, he would make a record of the payment? A. That is right.

Q. And record who paid it? A. That is right.

Q. And the amount paid? A. That is right.

Q. Was that the total extent of his bookkeeping service? A. He would take the cash and turn it over to me at night.

Q. And would you sign a receipt for the cash? A. Yes, I signed my name by the amount given.

Q. Let me ask you this, Mr. Ford: Since we parted on Friday afternoon to this moment here, have you discussed this case at all with any representative of the Government? A. Yes, I have.

Q. And with whom did you discuss it? A. Mr. Bolan.

Q. And did you bring the records down to Mr. Bolan that you said you were going to bring? A. I brought all those I could find.

(231) Did you give over those records to Mr. Bolan? A. I did, sir.

Q. Did you analyze those records with Mr. Bolan? A. Somewhat.

Q. Did you discuss your testimony with regard to those records with Mr. Bolan? A. Probably did.

Q. Well, about when did you discuss it? When did this take place? A. This morning.

Q. How early this morning? A. Oh, around 9:30, I guess.

Q. Not before then, sir? A. It might have been.

Q. Was Mr. Emanuel present? A. No, I think not; he was not present.

Q. At any time? A. He was in the room, but he went out.

Q. And in analyzing your records did you have before you at that time the tax returns which were produced here in court on Friday? A. I did not.

Q. Now, tell me this, Mr. Ford, if you will, have you all of the records that you could find here? (232) A. Yes, I have.

Q. Do you have them with you? A. I have them here.

Q. Can you produce them, or does Mr. Bolan have them? A. Mr. Bolan has them.

Q. Are there any records which Mr. Bolan, are there any records in existence which Mr. Bolan does not have which you did not give Mr. Bolan or which Mr. Bolan returned to you, either way?

Mr. Bolan: I object. I think the question is quite broad, your Honor.

The Court: I will let him answer it. If the witness doesn't understand it, he can say so.

A. What did you want to know? What was the question, please?

Q. Are there any records that Mr. Bolan does not have

The Court: Relating to the tax service.

Mr. Feldman: Relating to the records which he has brought down in response to the question on Friday which relate to the tax service, your Honor.

A. I think not.

Q. Well, don't you know? A. I don't know what Mr. Bolan has.

(233) Q. I am talking now about the records that you brought down this weekend.

The Court: Let us not argue. Did you bring down all the records about the tax service that you could find?

The Witness: I did, sir.

Q. Does Mr. Bolan have them all? A. He has.

Q. Here in the courtroom? A. Evidently.

Q. In other words, you turned those records over to Mr. Bolan? A. I did.

Mr. Feldman: Mr. Bolan, would you be good enough to produce them so that the witness may have them before him?

(Mr. Bolan hands to witness.)

Q. Now, you recall testifying, do you not, Mr. Ford, that your gross income from your tax service was between eight and ten thousand dollars a year? A. Something like that, yes, sir.

Q. Do you recall so testifying? A. I did.

Q. All right. Now, what records do you have before you? (234) A. I have the record books, I have two books that I could find.

Q. What do those books relate to? A. Information that Mr. Lennon took.

Q. Do you recall being asked, Mr. Ford, on Friday to bring down all of the records of your income and all of the records of your expenses for the years 1949, 1950 and 1951, as you may have had them? A. Those that I could find I brought.

Q. Are these the only records that you could find? A. That is right.

Q. So that with regard to all of your other activities you could find no other records?

The Court: As I understand, the question was with reference to the tax service.

Mr. Feldman: So that I may refresh the Court's recollection on that, I have the transcript of the witness's testimony.

The Court: Let us make it very clear. Are you asking him whether he had books about his other activities or just books about his tax service? Let us get that clear. Just so that we may know what we are talking about. I am a little confused as to which books you are looking for, if there are any. (235) You don't need to look at the record. You can ask the question directly.

Mr. Feldman: I think it would refresh the witness's recollection as to what he agreed to bring down.

The Court: What he agreed—all right. I believe he was asked about these books in relation to the tax service. You say he promised to bring some other books.

Mr. Feldman: Yes.

The Court: What other books did you look for? Did you look for any other books?

The Witness: I did not, sir.

The Court: All right. Have you got any other books about your other expenditures?

The Witness: I do not.

Q. Mr. Ford, do you recall on Friday being asked the following questions and making the following answers, and I refer to page 106:

"Q. Well, as an accountant, sir, did you keep a set of books for yourself showing your income and your own expenses? A. Yes, sir, I did.

"Q. Where are those books? (236) A. In my office.

"Q. And are they available? A. They are.

"Q. What years do they cover? A. I don't recall how long they will go back.

"Q. But they do go back quite a ways? A. Yes.

"Q. And are they in regular ledger form or cash book form? A. Yes.

"Q. So that by looking at those books you would be able to tell what you earned, that is, the money that you received and the money that you paid out? A. That's right.

"Q. And are you willing to bring those in? A. Yes.

"Q. And from those books, Mr. Ford, you can tell us, could you not, what entries you yourself made at the time the transactions were had? A. That is right.

"Q. But sitting on the stand here at the moment can you recall the entries that appear in those books? A. The amounts?

"Q. Yes. (237) A. Between eight and ten thousand dollars.

"Q. But beyond that you can't go? A. No."

The Court: What is your question?

Q. Now, my question is, Mr. Ford, where are those books?

Mr. Bolan: He has testified, your Honor——

The Court: Preceding that testimony, Mr. Feldman, were questions about the books relating to the tax service.

Mr. Feldman: No, sir, they were questions relating——

The Court: I have read that testimony and, really, in my mind, these preceding questions were books about the tax service.

Mr. Feldman: Your Honor, may I——

The Court: Maybe the witness was confused, as I was, but I thought that those questions related to what he received and expended from the tax service. Maybe we were both confused. But certainly that was my impression, and it is still my impression from reading the whole transcript. But go ahead: ask him the next question.

Q. Mr. Ford, in response to the questions that (238) I read to you a moment ago, were you asked those questions and did you make those answers? A. I was under the impression that the——

Q. No.

The Court: He did. The transcript is right.

A. I did.

Q. Now, Mr. Ford, were you asked these questions and did you make these answers, and I read from page 101:

"Q. Now, in your thirty-four years of experience, sir, in fillin gout Form 1040, for however long you filled them out, isn't that the place where you usually report your income from business? A. The Government has another form called C, which I filled out and placed in here.

"Q. And you say that is missing? A. It is missing.

"Q. Do you have a copy of it? A. In my file home at the office.

"Q. Wherever you have it A. I don't think so. 1949 I don't think I would have.

"Q. Did you make a copy of it? (239) A. I only keep them about five years. Yes, I made a copy."

Were you asked those questions and did you give those answers?

The Court: He was. What is the question?

Joseph E. Ford—Recalled—for Government—Cross

Q. Now, going then to——

The Court: What is your question? Don't——

Mr. Feldman: Your Honor, there was a host of material in between them that——

The Court: You are not laying the proper foundation to read the testimony. Ask the question and see if there is some contradiction. What is it you want?

Mr. Feldman: Well, I can only do it by continuing to read and omitting a lot of extraneous matter.

The Court: I will sustain that objection. We are not going to read all the testimony here.

Mr. Feldman: I am not saying that at all.

The Court: All right. Ask a question. Ask him a question. Don't read a lot of testimony and say, "Is that the testimony you gave?"

Q. Mr. Ford, do you recall being asked on Friday about your business activities, all of your business activities? (240) A. I think so.

Q. Were you asked these qestions and did you give the following answers: "Q.——"

Mr. Bolan: Which page?

Mr. Feldman: 103.

Q. "Q. So in 1954 when you were first interrogated by the Government concerning payments made by you to Mr. Lennon you had a record of your business activities, did you not? A. That was not the question they asked.

"Q. I didn't ask you what they asked, sir. I asked you whether or not in 1954 when you were first questioned by the Government you still had available the records of your business activities? A. I have some form of record in my office now.

"Q. Can you answer my question?"

The Court: What is the question you are asking?

Q. The question I will ask now is, were you asked those questions and did you give those answers?

The Court: He did. They are in the record. What is your question?

Q. My question is this, Mr. Ford. Where are the business records to which you referred in making (241) the response to those questions? A. The only records I have are here pertaining to my income tax business.

Q. Where is the copy of the C form? A. I don't have it.

Q. Where is the information from which you made up your C form for 1949? A. I made a copy and I have a record here.

Q. Is that the only business activity you had, your tax service, other than your jobs, of course? A. I had other business activities.

Q. What other business activities did you have, Mr. Ford? A. I was a Democratic leader and I had a lot of activities.

Q. What were some of the other business activities? A. I had contracts.

Q. To do what, sir? A. Jobs.

Q. What jobs? A. Forms.

Q. Were you paid for those? A. No.

The Court: You use "contracts" there in the political sense and not the legal sense?

The Witness: Political sense.

(242) Q. Did you run a dance hall, Mr. Ford? A. The club ran a dance hall.

Q. You didn't run it? A. The Witoka Club ran it.

Q. W-i-t-o-k-a? A. Witoka Democratic Club.

Q. Who was the landlord of the premises? A. Mr.——

Q. Was it Klausner? A. Mr.——.

Q. K-l-a-u-s-n-e-r? A. That is right.

Q. Was it to Mr. Klausner that the twenty-five or twenty-four hundred dollars in rent was paid that you told us about when you were talking of 1951? A. Evidently it was.

Q. Was that rental paid by you, Mr. Ford, or by the Witoka Club? A. Witoka Club.

Q. That was actually not your expense, Mr. Ford, was it? A. It was the Witoka Club.

Q. So that when you included it in the tax return, sir, you included an expense which was not your own? (243) A. I still had to pay rent.

The Court: Do I take it from what you say that the rent for the dance hall was different from the rent for the quarters you used for your tax service?

The Witness: That is right, I had an office.

Q. Mr. Ford, tell me how much rent did you pay for the dance hall and how much rent did you pay for your tax service? A. I paid all the rent because I was Democratic leader; I was responsible for the expenses.

Q. Tell me this, at the dance hall did you have a checkroom concession? A. Yes, I did.

Q. Who ran the checkroom concession? A. Run by the club.

Q. Who was the gentleman who ran it? A. The gentleman?

Q. Yes. A. Several people.

Joseph E. Ford—Recalled—for Government—Cross

Q. Was there a gentleman by the name of Alonzo something or other who ran it? A. He worked there once, yes.

Q. Did you pay Alonzo a salary? A. I think he got $50 a week.

(244) Q. Looking at your 1951 tax return——

Mr. Feldman: Do you have it, Mr. Bolan?

Q. Do you have it before you, Mr. Ford?

Mr. Bolan: Just a moment.

(Mr. Bolan hands to witness.)

Q. What appears there in 1951 for salaries paid? A. That didn't include the Witoka Club.

Q. What appears there, Mr. Ford? A. 2500 my tax——

Q. How much? A. $2500.

Q. $2500. You said Alonzo $50 a week, is that right? A. Alonzo wasn't there that year.

Q. Did you run it in that year? A. Yes.

The Court: Meaning what?

Q. The dance hall. A. Yes. The club ran it.

Q. You were the club, is that right, Mr. Ford? A. I was the leader.

Q. You took in all the money? A. I was the leader.

Q. Did you take in all the money? A. No, I didn't.

(245) Q. Did you pay out all the expenses? A. Most of them.

Q. Tell me this, Mr. Ford, who is Ernestine Glasgow? A. One of the girls that worked for me.

Q. Was she paid by you? A. She was.

Q. How much was she paid a week? A. I don't remember.

Q. How long did she work for you? A. She worked for one or two years.

Q. Would it help you refresh your recollection, Mr. Ford, if I were to tell you that Miss Glasgow received $55 a week from you? A. For how long?

Q. For the one or two years that she worked. A. She didn't work the whole year.

Q. What? A. She didn't work for me the whole year.

Q. What part of the year did she work for you? A. About two months.

Q. Mr. Ford, with regard to the 1949 tax return, do you have that book there? Go to the 1949 book. A. I don't have the 1949 book.

(246) Q. What book do you have? A. 1950 and 1948.

Q. Do you recall being asked about the year 1949? A. I think I do.

Q. What happened to the 1949 book? A. I don't have it.

Q. Who has it? A. May I explain something to you?

Q. Who has it, if you know, sir?

The Court: Do you know who has it or what happened to it?

The Witness: I would have to explain that, your Honor.

The Court: He has asked you if you know.

Q. Do you know who has it? A. I left the church in August, 1951. I left all of my books, all of my records behind. I didn't get them until February, 1952. At that time I got some of them; the others I didn't get, so Mr. Lennon or somebody can tell you where they are.

Q. But you can't? A. I can't tell you where they are; they were not returned to me.

Q. Do you have the 1951 book? (247) A. I do not.

Q. How did you make out your 1951 tax return without the 1951 book? A. I didn't have it.

Q. Will you answer the question, sir? A. I don't know how I made it out, but I made it out.

Q. Did you reconstruct it from memory? A. No, I did not.

Q. What record did you use? A. I don't have the records now.

Q. Where are those records? A. I don't know.

Q. Were they turned over to the Government? A. They were, one time.

Q. Did you ever get them back from the Government? A. I don't remember.

Q. But they were included in the records that you turned over to the Government, is that right? A. I don't know what I turned over to the Government just now. I have to look at the receipt.

Q. Look at the receipt, sir.

The Court: Have you got the receipt here?

Mr. Bolan: Shall we mark it for identifica- (248) tion?

The Court: All right, mark it.

The Clerk: Government or defendant?

Mr. Bolan: Defendant.

(Marked Defendant's Exhibit C for identification.)

Q. Looking at that receipt, Mr. Ford, is your recollection refrshed as to what you turned over to the Government? A. Yes.

Joseph E. Ford—Recalled—for Government—Cross

Q. Will you tell us what you turned over to the Government? A. This is dated June 10, 1954. (Reading) 1. Check for $800 dated March 17, 1947. 2. Check for $15 dated March 19, 1947. 3. Check for $75 dated March 19, 1947. 4. Check for $1300 dated March 16, 1948. 5, Check for $100 dated April 20, 1948. No. 6, check for $1600 dated March 18, 1949. 7. Check for $1600, dated March 16, 1950. No. 8, check for $100, dated March 24, 1950.

Q. That is all, sir? A. That is all.

Q. Didn't you tell us just a moment ago that you turned your books over to the Government? (249) A. I thought that I had until I saw this receipt.

Q. Is this the first time you have seen the receipt, in how long? A. I kept it with me all the time.

Q. When did you give it back to Mr. Bolan? A. This morning.

Q. How early this morning, Mr. Ford? A. Oh, after nine.

Q. Can you tell us the occasion of your giving your receipt to Mr. Bolan? A. I brought them in and I turned them over to the Government.

Q. They received everything? A. Everything.

Q. So that until Mr. Bolan produced it you had no record of what you had turned over to the Government? A. Mr. Bolan produced what?

Q. The receipt. A. Until——

Q. He produced it from his wallet. A. I didn't read it. I didn't read it.

Q. Didn't look at it at all? A. I didn't read it.

Q. You just took it out and handed it to him (250) this morning before you came to court? A. That is right, sir.

Q. The subject under discussion with Mr. Bolan were your books and records, do you recall? A. That is right.

Q. You recall also that on Friday you were asked about a receipt for your books and records, isn't that right? A. That is right.

Q. And this morning when you were discussing your testimony here concerning your books and records with Mr. Bolan, you produced the receipt, is that right? A. I gave him the receipt.

Q. Tell me, Mr. Ford, looking at—what books do you have? I am sorry. A. 1948.

Q. And was the business done in 1949 approximately the same as that done in 1948? A. Approximately.

Q. Any significant variation? A. No.

Q. Can you tell us then by looking at the 1948 book what the total amount of business was in 1949? A. I didn't add it up. The Government added it.

Q. What were the figures the Government came to?

The Court: 1948?

(251) Mr. Feldman: Yes.

A. 8,500.

Q. $8,500, is that right? A. Something like that, sir.

Q. What other book do you have? A. 1950.

Q. Can you tell us by looking at the 1950 book what the total volume of business was that you did in 1950? A. No, I can't, unless—around $10,000.

Q. Didn't the Government add that one up for you? A. I don't know.

Q. This is all from the book——

The Court: Just a minute. Do you know whether—

The Witness: I don't know whether they did.

Q. How long has the Government had them? A. How long has the Government had them?

Q. Yes. A. These books?

Q. Yes. A. About a week, I guess; I guess; I don't remember.

Q. Didn't you tell me just a moment ago, Mr. (252) Ford, that those are the books you brough down this morning to Mr. Bolan? A. No, I did not.

Q. Do you recall your testimony a few moments ago? A. I recall I told you I brought down the receipt, brought down my bank books, brought down some checks the Government has now.

Q. Do you remember telling me a moment ago that those books were the only records that you brought down because they were the only records that you could find? A. I didn't bring those down this morning. I brought down bank books, checks, and this receipt.

Q. You don't recall that testimony that I just related to you? A. I might have misunderstood you, sir.

Q. Did you misunderstand me on Friday when I spoke to you?

The Court: Ask a question. Let us not have argument.

Q. Now, looking at the type of book that you have there, Mr. Ford, do you recall ever seeing a similar type of book with the Government other than those which you have in (253) front of you, which are Ex- hibits C and D for identification? A. I didn't get the question.

Q. I am sorry.

Mr. Feldman: Mr. Reporter, will you read the question?

(Question read.)

The Court: What is Exhibit C and D for identification?

Mr. Feldman: Exhibit C and D, as I understand, it is the record of receipts——

The Court: No. They have not been marked for identification.

Mr. Feldman: For identification?

Mr. Bolan: May I clarify that? C is the receipt. But the books have not been marked.

The Court: C is the receipt for those checks.

Mr. Feldman: I apologize. May I have them marked D so that I can refer to them properly?

The Court: You mean the two books?

Mr. Feldman: Yes.

The Court: All right.

(Marked, Defendant's Exhibit D and E for identification.)

Q. Now, I will withdraw the last question and (254) will ask you again, Mr. Ford, do you recall in the discussions that you had with the Government from time to time seeing books similar to Exhibits D and E for identification in the Government's possession? A. Do I recall seeing similar books?

Q. Yes. A. No.

Q. Now, how many times have you discussed this case with people from the Government? I am talking about the Lennon case? A. Lennon case? Only with Mr. Bolan.

(255) Q. Never with Mr. Emanuel?

The Court: Never with Mr.——

Mr. Feldman: Emanuel.

A. Mr. Emanuel was not present.

Q. You only talked to Mr. Bolan? A. That is right.

Q. Mr. Emanuel never asked you a question? A. I don't recall.

Q. And you never answered a question? A. I don't recall.

Q. You don't recall anything like that? A. I don't recall.

Q. Now, did you discuss the Lennon case with Mr. Bolan either in Mr. Emanuel's presence, or at any time prior to your appearing on the stand in the Dodson case? A. No.

Q. Didn't discuss the Lennon case with him at all? A. Not at all.

Q. Did you discuss the Lennon case with anybody in the Government prior to your appearing in the Dodson case? A. I wasn't asked a question in the grand jury (256) room.

Q. And that is the only thing that you told, was the story of the checks, is that right? A. That is right.

Q. Nothing else? A. That is right.

Q. Nothing about this story at which you were allegedly present, is that right? A. That is right.

Q. Nothing about the particulars of your tax service, is that right? A. That is right.

Q. Nothing about the gross income of your tax service, is that right? A. That is right.

Q. Nothing about the expenses of your tax service? A. That is right.

Q. So that up until the Dodson case—now, do you recall when that was? A. Yes, I recall that.

Q. When was that? A. This year.

Q. When this year do you recall? (257) A. I don't recall the month.

Q. The month of June? A. I don't recall the month.

Q. All right, but it was some time this year, either May or June, or something like that, is that right? A. That is right.

Q. And up until May or June of this year, 1956, you never discussed the Lennon case with anybody in the Government, is that right? A. As far as I know.

Q. Is that right, sir? A. I don't recall ever.

Q. And the only thing that you ever discussed with anybody was your testimony before the grand jury for two minutes with regard to the checks, is that right? A. That is right.

Mr. Feldman: Now, does the Government have Mr. Ford's grand jury testimony available?

Mr. Bolan: Yes, it does.

Q. Now, Mr. Ford, can you tell us whether or not the story you told here in court and on Friday, of course, with regard to the checks was the same (258) story as you told the grand jury? A. As far as I can remember, sir.

Q. Well, do you recall precisely what you told the grand jury? A. They asked me what those checks represent and I told them.

Q. What did you tell them? A. Payment for services rendered to me by Mr. Lennon.

Q. And did they ask you what the services were for? A. They might have.

Q. You don't recall that? A. I don't recall that.

Q. Do you recall answering any question describing your tax service? A. I don't think I described it before the grand jury. I am not too sure.

Q. Now, can I ask you this, Mr. Ford:

Who asked you to appear before the grand jury? A. I was served with a subpoena.

Q. And prior to being served with the subpoena were you interviewed by an Assistant United States (259) Attorney? A. I think so.

Joseph E. Ford—Recalled—for Government—Cross.

Q. And during the course of that interview with the Assistant United States Attorney did you tell him that you had these checks? A. No, I did not.

Q. Well, how did he know enough to serve you with a subpoena? A. I was served with a subpoena because Mrs. Dodson testified that I made out her return.

Q. Are you saying now, sir, that the questioning from the grand jury was purely accidental at the time that you were there? A. I came in and talked with Mr. Pierce and he sent for me to come in.

Q. And when you talked to Mr. Pierce, he was an Assistant United States Attorney, wasn't he? A. That is right.

Q. And did you discuss with Mr. Pierce these checks that you had? A. I don't recall. I don't think so.

Q. Now, you left the tax service for the last time in 1951, or that was the last year you were at the church, is that right? (260) A. That is right.

Q. Now, but you made about $10,000 gross in 1951? A. Approximately.

Q. What was the average ever paid by a client for the tax service during 1951? A. Five or ten dollars.

Q. Would it be fair then to state, Mr. Ford, that you serviced about 3,000 taxpayers?

The Court: In what period?

Mr. Feldman: In the year or for the year 1951, that is, filed or filled out returns for them for the year 1951?

A. I have no idea of the number. I have a book here.

Q. And could you by looking at that book tell us approximately how many clients your tax service had without taking too much time? A. Do you want me to count them?

Q. Can you just glance at it, give us an idea of how many by just taking a glance at this book? A. I can count them for you.

Q. Well, do you recall being questioned in the Dodson case, Mr. Ford, about how many clients you (261) serviced? A. I don't recall that question, sir.

Q. And you used the figure of about 800 or 900? A. I don't remember.

Q. Well, would that figure be accurate, Mr. Ford? A. I don't know.

Q. Well, your average fee was what, sir? A. Five or ten dollars.

Q. Would you say seven and a half dollars was a fair average of the money that you took in from all your clients? A. Five and ten dollars.

Q. Would you say that seven and a half dollars was a fair average?

The Court: Wait a minute. When you get into mathematics and asking about the average you have to weigh it. He says the fees were five and ten dollars, so that does not mean that you have an average of seven and a half.

Q. Tell me this, Mr. Ford: Were there any $3 fees? A. The $3 fees for the State tax.

(262) Q. Whatever it was. A. And it is not included in this book at all.

Q. They don't apepar at all? A. No.

Q. Look in 1951, please, or 1950 is it? A. Yes.

Q. That is Exhibit E, isn't it? A. Right.

Q. Look at it? A. Yes.

Q. Are there any $3 fees there? A. I could find some here, $3.

Q. That is what I asked you. A. But I have done some that are free, too.

Q. And have you any for $3? A. I don't know. I will see if I can find a $3 one for you, yes.

Q. And you have looked at the very first page? A. Yes.

Q. Look at the second page? A. Yes, I find one.

Q. Look at the third page? A. Yes.

Q. So that some of your clients paid you $3 (263) and some of your clients paid you $5? A. Yes.

Q. And some of your clients paid you $10, is that right? A. Yes, and according to this some free also.

Q. And some were free? A. Yes.

Q. And the total cash that you took in was $10,000, is that right? A. That is right.

Q. And the total profits that you made, if I recall your testimony of Friday, was between 500 and $2,500 a year, is that right? A. That is right.

Q. Was 1950 a $500 year or a $2,500 year? A. I don't know.

Q. Well, you have the book in front of you. A. I have to add it up.

Q. That was the one the Government did not add up, that right? A. That is right.

Q. Well, did the Government add up the 1948 book? A. I think they did.

(264) Q. And 1948, you will recall, Mr. Ford, telling us was about the same as 1949? A. Eight thousand five hundred I think.

Q. For 1948? A. Yes.

Q. And you made a profit of between 500 and 2,500, is that right? A. I don't recall what the profit was.

Q. Well, don't you recall telling us on Friday that for each of the three years, 1949, '50 and '51 you made between 500 and 2,500 dollars profit? A. That is right.

Q. So that you would average expenses of somewhere between 7,500 and $9,500 a year, is that right? A. Something like that.

Q. Now Mr. Ford, when you left the tax service, you left in 1951, right? A. I did not leave the tax service.

Q. Well, you left the church? A. I left the church.

Q. Yes. Do you recall that? A. Yes.

(265) Q. And you opened up your own office for the 1952 tax returns, is that right? A. Yes.

Q. And your expenses for the running of this tax service was about between 7,500 and 9,500, is that right, Mr. Ford.

The Court: When?

Mr. Feldman: 1949, '50 and '51.

The Court: All right. You asked when he left the church and I want to make sure what you are talking about.

Mr. Bolan: I just would like to point out, your Honor, that the mathematics are not correct. He said that the gross was a maximum of eight and the profit was a minimum of 2,500, so the minimum figure would be 5,500 and not 7,500.

Mr. Feldman: I think the jury will do the necessary mathematics.

Mr. Bolan: Yes, but we do not want them mislead.

Mr. Feldman: Thanks a lot, Mr. Bolan.

Mr. Bolan: You're welcome.

Q. Did you tell us a moment ago, Mr. Ford, that the expenses were between 7,500 and 9,500?

(266) The Court: Of course, when you are asking different years and you talk about averages,

it is one of the worst things you can do, or one of the most misleading things.

Mr. Feldman: The unfortunate part of it is that we have no records by which we can go.

The Court: But the witness has stated that over a period of three years the profits ran between 500 and 2,500 on the average.

Mr. Feldman: Giving him credit for the larger and greater because I do not want to pin on one as against the other, your Honor.

The Court: All right.

Q. Mr. Ford, in 1952 you ran your tax service from your own office other than at the church? A. 1952?

Q. Yes. A. Yes.

Q. And in 1952 where was your tax office? A. 222 West 145th Street.

Q. And that was the same address as the ballroom? A. That is right.

Q. And, Mr. Ford—

The Court: Is that the same address as the Witoka Club?

(267) The Witness: The Witoka Club, yes.

Q. And tell me this, Mr. Ford: Did any of the people for whom you paid taxes in 1951 come to you to have you do their taxes in 1952? A. Some of them did.

Q. And is the same thing true for 1953? A. That is right.

Q. And in 1952 do you recall, sir, was your gross volume larger or smaller than that which you told us about in 1951? A. I don't recall.

Q. And in 1953 was it larger or lesser than that that you told us about in 1951? A. I don't recall.

Joseph E. Ford—Recalled—for Government—Cross—

Q. No recollection at all? A. None whatever.

Q. Did the profits remain about the same? A. I have no idea.

Q. No idea at all? A. None whatever.

Q. In the course of all of this, Mr. Ford, that is from 1949 through 1953 have you ever been audited by the Internal Revenue Service? (268) A. I have been.

Q. And as the result of those audits were you assessed additional taxes? A. I was not.

Q. When were you audited, Mr. Ford? A. I don't recall the last time.

Q. Was 1949 ever audited, your return for the year 1949? A. I don't recall now if it was.

Q. Was 1950 audited? A. I don't know.

Mr. Feldman: Has the 1950 return been found incidentally, Mr. Bolan?

Mr. Bolan: No, it has not.

Q. Now, was 1951 audited, Mr. Ford? A. I don't know. I have a copy here.

Q. Well, in preparing for your testimony in this case, Mr. Ford, were your tax returns analyzed by Mr. Emanuel? A. I did not prepare for this.

Q. You did not prepare for this at all? A. No. I was called in and asked a few questions and given a subpoena.

Q. And that is all, isn't that right? (269) A. That is right.

Q. Now, on what basis was Mr. Lennon paid by you? A. According to the amount of money that I made, the amount of money that I took in.

Q. Now, in 1949, which was the same as 1948, is that right— A. That is right.

Q. —you took in about $8,000, is that right? A. That is right.

Joseph E. Ford—Recalled—for Government—Cross

Q. And in 1950 I think it is that you have there, is that right— A. That is right.

Q. —you took in about $10,000? A. That is right.

Q. Now, how much money did you pay Mr. Lennon in 1949? A. I don't recall.

Q. And how much money— A. I paid him by check.

Q. —did you pay Mr. Lennon in 1950? A. 1950?

Q. Yes. A. $1,600.

Q. You don't recall what you paid him in 1949? (270) A. I have some checks here.

Q. You don't recall the amount of those checks?

The Court: You can refresh your recollection from the checks if you want.

The Witness: I can.

Mr. Bolan: Yes (handing papers to the witness).

A. March 18, 1949, $1,600.

Q. And you also know that by looking at the check, is that right? A. That is right.

Q. You have no recollection of paying Mr. Lennon except that you see the date on that check, is that right? A. Well, this is good enough for me.

Q. In other words, you are looking at the check and you are saying that if this is the check made out to Mr. Lennon that I must have paid it to him for services rendered? A. I had no other reason to give him $1,600.

Q. Mr. Ford, now listen carefully. Is your testimony concerning the fact that this check was paid to Mr. Lennon based on your own recollection (271) that you actually paid him, or purely based on your looking at the check and saying "I must have paid him"? A. No.

Q. Which is it? A. It is that I paid him.

Q. So that what you told us a moment ago is that you have a recollection of having paid him independent of the

check, is that right? A. I had to pay him. He worked for me and I had to pay him.

Q. But do you have a recollection of actually paying him? A. Yes, I do.

Q. And in your recollection of actually paying him, Mr. Ford, will you be good enough to tell us the formula that you used on your $8,000 of income so that you could arrive at the amount of $1,600? A. No, I can't tell you in that respect how I arrived at that position.

Q. Didn't you tell us that you had an understanding with Mr. Lennon to pay him? A. I had no understanding with him at all. He came to work for me and I paid him. No set amount was mentioned.

(272) Q. So there was no formula? A. No.

Q. It was purely what you decided to pay him? A. That is right.

Q. So that when you told us on Friday that there was—that you paid him in accordance with the amount that you got, that was not the formula, was it? A. That is my formula, yes.

Q. That was your formula, is that right? A. That is right.

Q. But you could not tell by looking at the amount of money that you took in how much you were going to pay Mr. Lennon? A. At the end of the season Mr. Lennon would give me a tape showing the amount of money taken in and I would give him a check.

Q. That did not happen in 1951, did it? A. It happened every year except 1951 when I had given him cash.

Q. Was it 1951, Mr. Ford, the year that the laundry man came to call at 5 or 6 o'clock in the morning? A. That is right.

(273) Q. And you turned on the light, is that right?

The Court: What is that?

Q. And you turned on the light in your bedroom so that you could go to answer the door for the laundry man? A. You remember that story, yes, sir.

Q. It was a good story, wasn't it? A. A good story.

Q. Isn't that right? A. Yes.

Q. And it was a funny one, too? A. Well, it was funny to me.

The Court: Well, let us move ahead with the case. Ask him another question.

Q. And isn't it a fact, Mr. Ford, that it was just that, nothing more than a story? A. No, that is not true either. That is a true story.

Q. The laundry man came at 5 o'clock and the money started to burn in the lamp after you turned on the light? A. Mr. Lennon knows that story because he framed it in the Amsterdam News.

Q. And everybody was laughing about it? (274) A. Everybody but me.

Q. And you went with the burnt money to the bank, is that right? A. That is right.

Q. Is that the first time that anything like that ever happened to you, Mr. Ford? A. The very first time.

Q. What? A. The very first time.

Q. And it stands out vividly in your mind? A. Yes, it does.

Q. And you could never forget it? A. No.

Q. What bank did you go to in order to turn in the burnt money and in order to get good money? A. The Chase National Bank.

Q. Where? A. Church Street, Worth and Church Street.

Q. Partly burned, was it, this money? A. Not too badly burned. All the serial numbers were there.

Joseph E. Ford—Recalled—for Government—Cross

Q. And about how much money was there? A. I don't recall.

Q. You had hidden this money—where was this (275) lamp? By the way, I don't think you told us that. A. In my den.

Q. In your den? A. Yes.

Q. That is at 2171 Madison Avenue? A. Yes.

Q. Now, 2171 Madison Avenue is how big an apartment there? A. Four rooms.

Q. How many bedrooms? A. Two

Q. And which was the den? A. That is where I slept, in the den.

Q. And one of these bedrooms was used as a den? A. Yes.

Q. And the other bedroom was used by Mrs. Ford? A. Yes, that is right.

Q. And you were sleeping alone in the den? A. That is correct.

Q. And Mrs. Ford was sleeping in the bedroom? A. Yes.

Q. The doorbell rang at five or six o'clock in the morning? A. That is right.

Q. And you put on the light? (276) A. That is right.

Q. And in going to answer the door— A. I started to answer the door, yes.

Q. And when you answered the door, the laundryman was there? A. Mrs. Ford answered the door.

Q. Mrs. Ford answered the door? A. Yes.

Q. And you then came back and went to sleep? A. Went asleep.

Q. And you left the light still burning? A. Yes.

Q. Tell me this: How long had that money been in the lamp? A. Overnight.

Q. You just put that money in the night before? A. That is right.

Q. Where had you gotten the money from? A. Mr. Lennon.

Q. Were these the night's receipts? A. The night's receipts, and some I had around there hidden. I had moved it from one hiding place, and I had to find another, and so I put it in the lamp this time.

Q. And you were hiding it from the place where (277) Mrs. Ford would clean, is that right? A. I was hiding it from the place where she might find it.

* * * * *

(278) *By Mr. Feldman:*

Q. Mr. Ford, at the time of your direct testimony you made mention of the fact that you had a political disagreement with Congressman Powell, and that was the basis of your leaving the church? A. That is right.

Q. Now, you left the church when, sir? A. August of 1951.

Q. And when you use the expression "left the church," you refer to the fact that you disassociated yourself with Congressman Powell, is that right? A. That is right.

Q. And with the associates of Congressman Powell, is that right? A. Yes, that is right.

Q. And in 1951 you went out on your own; that is, independent of Mr. Lennon and Congressman Powell and others who had been associated with the Congressman, is that right? A. That is right.

(279) Q. You were the Democratic district leader, is that right, sir? A. That is right.

Q. And your political career progressed to the point, sir, did it not, where you became a Democrat who supported the Republican candidates, is that right, sir? A. Yes, one year.

Joseph E. Ford—Recalled—for Government—Cross

Q. And what year was that, sir? A. I think it was 1953.
Q. That was the election campaign of 1953? A. Yes.
Q. And it was——

The Court: What was that, a mayoralty campaign or what?

The Witness: No, I organized Democrats for Ives.

The Court: Democrats for Ives?

The Witness: Democrats for Ives when he ran for governor.

Q. And you ran that in Harlem, did you not? A. I did.

* * * * *

(295) Q. Mr. Ford, do you recall being asked on Friday whether or not you had ever made a statement under oath that the only income that you ever had was from your job? A. I don't remember.

Q. Do you recall also being asked whether or not you had ever stated under oath that you were in financial difficulties? A. I don't recall that.

Q. Mr. Ford, I show you this paper and ask you whether or not you recognize your signature? A. I do.

Q. Is that your signature? A. It is.

Q. Did you swear to it before a notary public? A. That particular document was——

Q. I asked you whether or not you swore to it (296) before a notary public. A. Evidently I did. Do you want me to explain what that is?

The Court: No, just wait for the next question.

Q. Mr. Ford, going to the same document, I ask you to look at the document now. There is your signature and I

ask you to look at it and ask you if you recognize it as an affidavit made by you. A. This is the affidavit.

Q. And was it made by you or wasn't it? A. This affidavit was drawn by my lawyer.

Q. Was it made by you? Did you sign it? A. Drawn up by my lawyer and he said to come in the office and sign these papers.

Q. And you don't know what you signed? A. I don't think I ever read it.

Q. All right. Did you sign it and swear to it? A. That is my signature.

Q. And is that your affidavit? A. I will have to read it.

Q. Please do. A. This is an affidavit drawn for me——

Q. I didn't ask you to tell what it is. (297) A. I am trying to tell you——.

The Court: Ask him if it was his affidavit. Go ahead and give your answer.

Mr. Feldman: May I have it?

The Court: No, what is your answer? Is that your affidavit?

The Witness: My answer is that my lawyer drew this affidavit and I signed it.

The Court: You signed it and swore to it?

The Witness: Yes.

The Court: Did you read it before you signed it?

The Witness: I did not read it. I didn't even finish reading it just now, just glanced at it.

Q. You didn't finish reading it just now? A. No.

Q. I see. Do you want to finish reading it? A. No, I don't want to take the Court's time to read it.

Q. Mr. Ford, do you recall or would it refresh your recollection if I told you that in this affidavit dated——

Joseph E. Ford—Recalled—for Government—Cross

The Court: You are starting an objectionable question.

Mr. Feldman: I realize that I am and I will (298) withdraw it.

The Court: All right. Ask it in the proper form. He says he signed the document.

Mr. Feldman: Your Honor, I will offer it in evidence at this time.

Mr. Bolan: I object. I do not see where it has any relevancy.

The Court: Let me look at it.

Mr. Feldman: I draw your Honor's attention to the third paragraph.

The Court: Do you want to offer it particularly for the third paragraph?

Mr. Feldman: I do, sir, and I do not want it for the balance of it.

Mr. Bolan: May I read it, your Honor? I have not seen it.

The Court: Yes.

Mr. Bolan: Your Honor, I do not see that it is in any way inconsistent with what this witness has testified to.

The Court: If Mr. Feldman wants it, we will receive it in evidence as Defendant's Exhibit F, and the Clerk will then give it back to him after it is marked.

(299) Mr. Bolan: As to that paragraph?

The Court: No, we will take the whole thing.

Mr. Bolan: All right.

(Marked Defendant's Exhibit F.)

The Court: This is an affidavit which was executed by Mr. Ford in connection with an applica-

tion to commit him for failure to pay an instalment of alimony.

Mr. Feldman: Apparently, sir.

Mr. Bolan: What is the date?

Mr. Feldman: The date of the affidavit is October 13, 1950.

With the Court's permission, may I read a portion of the affidavit to the jury?

The Court: Yes.

Mr. Feldman: This is an affidavit, ladies and gentlemen, in an action in the Supreme Court of the State of New York entitled Lurline Tobin Ford, Plaintiff, v. Joseph E. Ford, Defendant.

The affidavit is that of Joseph E. Ford, the witness, and it is dated October 13, 1950, and I would read to you the following:

(Mr. Feldman then commenced reading with the words: "That deponent fully respects the order of this (300) court directing him to pay alimony in the sum of $22.50 a week," and ending with the words: "That deponent's defection at the moment is because of his temporary financial embarrassment and not because of any act or desire on his part.")

Q. Now, Mr. Ford——

The Court: Wait a minute. Wait a minute. You had better read the rest of that.

Mr. Feldman: Certainly. I will read the whole thing.

The Court: I mean to give the whole picture of what that paragraph is.

Mr. Feldman: Yes, sir.

(Mr. Feldman thereupon read the balance of the paragraph in its entirety.)

Mr. Feldman: Shall I go on, your Honor?

The Court: Yes. That is all right now.

(301) Do you recall being cross-examined on Friday as to whether or not you ever made a statement under oath that the only income that you had was from your job at the—working for the City of New York? A. I said I didn't recall.

Q. Well, Mr. Ford, I show you this document and ask you whether or not that is your signature? A. That is my signature.

Q. Don't you want to look at it first? A. I see it.

Q. And you swore to your signature before a notary? A. I did.

Q. Do you recognize this document for what it is, sir? A. I do.

Q. It is an affidavit in the same action that I have just read to the jury, the action of Lurling Tobin Ford v. Joseph E. Ford? A. I do.

Q. Is that right, sir? A. That is right.

Q. Now this affidavit was sworn to on January 9, (302) 1951; is that right, sir? A. That is right.

Q. And on January 9, 1951, Mr. Ford, you were running your tax service? A. January 9th?

Q. 1951? A. Yes.

Q. And you have your job with the Commissioner of Elections? A. That is right.

Q. And you had this ballroom at the Witoka Democratic Club? A. No, I had no ballroom.

Q. You had no ballroom at that time? A. That was the Democratic Club.

Q. Was it ever used as a ballroom? A. Dance—

The Court: Wait a minute. The witness is saying that was not his; it was the Democratic Club of which he was leader.

Q. Did you ever operate the ballroom out of these premises and collect fees for its use? A. I never did.

Q. The club did? A. That is right.

(303) Q. But you paid the expenses? A. That is right.

Q. Did the money go into the club account? A. It went into—what money?

Q. The money that you received for the rental of the ballroom? A. It was very little.

Q. Whatever it was, into whose account— A. It was no account.

Q. Who pocketed the money? A. I pocketed it.

Q. Right. Mr. Ford, that was all on January 9, 1951, is that right? I mean, January 9, 1951 covers this period we have just been talking about, is that right? A. Yes.

Mr. Feldman: I offer this in evidence, and I respectfully draw the Court's attention to the first complete paragraph on page 3 (handing).

The Court: Have you seen this, Mr. Bolan?

Mr. Bolan: No, sir, I have not.

(The Court hands to Mr. Bolan.)

Mr. Feldman: I am offering the entire affidavit.

(304) The Court: Any objection, Mr. Bolan?

Mr. Bolan: No, your Honor, I see no objection.

The Court: All right. I will receive it in evidence. This is an affidavit made by Mr. Ford in opposition to a motion by his wife's attorney for additional counsel fees. Received in evidence.

(Defendants' Exhibit G received in evidence.)

Mr. Feldman: Your Honor, with the Court's permission, may I read a portion of this?

The Court: Yes.

Mr. Feldman: I won't repeat that which you just heard from the Judge. This is Mr. Ford's affidavit. I am reading from page 3 of this affidavit.

Mr. Bolan: May we have the date too, Mr. Feldman?

Mr. Feldman: Oh, yes. The date of the affidavit is January 9, 1951. "And that the defendant"—that is Mr. Ford—"on the other hand has only the income from his job and is presently barely maintaining himself while he endeavors to make his alimony payments current."

Q. Mr. Ford, do you recall that on Friday (305) I asked you what your take-home pay was from your job at the Commissioner of Elections? A. That is right.

Q. And you said you didn't recall? A. That is right, sir.

Q. Now I show you this document, Mr. Ford, and I ask you whether or not that refreshes your recollection as to what your take-home pay was? A. Yes. Approximately $68 a week.

Q. Right:

Mr. Feldman: I have no further questions.

The Court: Any redirect?

Mr. Bolan: Yes, a few, your Honor.

Joseph E. Ford—Recalled—for Government—Re-direct

(307) Q. Now, Mr. Ford, the years 1949, 1950 and 1951 were not the only years that you paid Mr. Lennon for his services in assisting you at the tax service; is that correct?

Mr. Feldman: Objected to.

A. That is correct.

Mr. Feldman: If your Honor please, that is objected to and I ask that the answer be stricken. The only relevancy here is 1949, 1950 and 1951.

Mr. Bolan: Your Honor, may——

The Court: Those are all the years which have been introduced in evidence so far. Now you are going into other years?

(308) Mr. Bolan: I would like to go into the two prior years because there has been considerable cross-examination on those prior years.

Mr. Feldman: The Government is bound by its own bill of particulars as to what its claim was.

Mr. Bolan: I am not claiming that there was any tax evasion for those years. I want to establish the pattern of payment by Mr. Ford throughout the time Mr. Lennon worked for him.

The Court: On that basis then I will allow it.

Mr. Feldman: Exception, your Honor.

Q. Now, Mr. Ford, do you recall what you paid Mr. Lennon for his service in the year 1948? A. I do not.

Q. I show you Government's Exhibit 8 for identification and ask you if that refreshes your recollection as to what you paid him? A. Yes, it does.

Q. How much did you pay him in 1948? A. March 16, 1948, I have a certified check for $1,300.

April 20th, I have another check for $100. That is $1,400.

(309) Q. Do you remember why the check was certified?

Mr. Feldman: Objected to, if your Honor please.

The Court: Wait a minute.

A. The check was certified for the same reason that I——

Mr. Feldman: Your Honor——

The Court: You object to the question as to why the check was certified?

Mr. Feldman: That is right.

The Court: On what ground?

Mr. Feldman: It is calling for the operation of the witness' mind, does not elicit any fact at all; he can make up any story he wants to in response to a question like that.

The Court: The mere fact that a person can make up a statement does not mean that it is an objectionable question. Any question calls for the operation of a man's mind.

What do you mean by your objection?

Mr. Feldman: It is not probative of any fact at all in this issue.

The Court: You are making another objection. You withdraw the other objection, is that it? (310) You are making another objection that it is not probative. Is that what you are making now?

Mr. Feldman: I am making both, if your Honor please.

The Court: I certainly overrule the first one. And the second one you are objecting to the question as

to why the check was certified on the ground that it is not probative.

Mr. Feldman: Of the issue in this case.

The Court: They were not offered, as I understand, to prove any tax evasion in these years. They are offered simply to show pattern in some previous years. Your objection is overruled.

Mr. Feldman: Exception, your Honor.

May I point out to the Court that there is nothing about certification which establishes the pattern one way or the other.

The Court: You stated your objection. I have overruled your objection. You can't jump from objection to objection to objection, you know, and have this dialogue go on forever.

What is your next question?

Q. What was the answer to that, Mr. Ford? As to why this check was certified?

(311) A. That check was certified for the same reason that I endorsed the others.

Q. What was that? A. Because Mr. Lennon had no account at the bank, and while I was at the bank one day I got this check certified so he wouldn't have no trouble cashing it.

The Court: Did he ask you to do it?

The Witness: No, I did it on my own.

Q. Do you recall how much you paid Mr. Lennon in 1947 for his services? A. No, I do not.

Mr. Feldman: The same objection, your Honor, and I presume the same ruling.

The Court: The same ruling.

Mr. Feldman: The same exception.

Q. I show you Government's Exhibit 7 for identification and ask you if that refreshes your recollection as to how much you paid Mr. Lennon for his services in your tax service in 1947? A. Yes, it does.

Q. How much did you pay him? A. March 17, 1947, $800. March 19, 1947, $15. March 19, 1947, $75. That is $890.

(312) Mr. Bolan: Your Honor, I offer Government's Exhibits 7 and 8 in evidence.

The Court: The witness' recollection has been refreshed by them. He has testified that he paid those amounts in those years to Mr. Lennon for services in connection with the tax matter. Those years are not involved in this indictment.

Mr. Bolan: I will withdraw the offer.

The Court: All right. They will not be received in evidence, except the testimony purely as showing a pattern of conduct that may have some relevancy as to the years involved in the indictment.

Q. Mr. Ford, looking at Defendant's Exhibit B for identification, are you able to state positively how much you grossed from your tax service for the year 1951? A. Grossed $10,000.

Q. Are you able to state positively how much money you paid out in salaries for your tax service in that same year? A. Yes, I am.

Q. How much? A. On line 4——

(313) Q. No. How much? A. $3,300.

Q. For salaries? A. Salaries I have 2,500, then for labor I have $800.

Mr. Feldman: For what? I am sorry.

The Court: "Labor."

Mr. Feldman: "Label"?

The Witness: Labor.

Mr. Bolan: I have no further questions.

The Court: Do you have any further questions, Mr. Feldman?

Re-cross Examination by Mr. Feldman:

Q. What did you gross in 1947 from your tax service? A. I don't remember, sir.

Q. What did you gross in 1948? A. I don't recall, sir.

Mr. Feldman: No further questions.

The Court: All right. The witness is excused. We will now recess.

Mr. Feldman: If I may, your Honor:

By Mr. Feldman:

Q. Mr. Ford, did you ever give anybody a check (314) to cash for you? A. Sure.

Mr. Feldman: No further questions, your Honor.

The Court: No further questions?

Mr. Bolan: No, your Honor.

The Court: All right, you are excused.

(Witness excused.)

The Court: It is time for the luncheon recess. The Court will stand recess until two o'clock.

(Recess to 2.00 p.m.)

Heinrich Ludeke—for Government—Direct
Heinrich Ludeke—for Government—Cross

(447) Mr. Bolan: The Government calls as its next witness Mr. Heinrich Ludeke.

HEINRICH LUDEKE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bolan:

Q. Mr. Ludeke, what is your occupation? A. I am employed by the Chemical Corn Exchange Bank in 311 Lenox Avenue as chief clerk.

. . . . . .

(466) *Cross-Examination by Mr. Feldman:*

Q. Mr. Ludeke, looking at the records, and we do not have to dig them out again, and I think you will recall this a bit by now, and you do, don't you? A. Yes, sir.

Q. Yes. Was this a corporation account or an individual account? A. A corporation account.

Q. And who were the persons who were authorized to draw money out of that account? A. Any two mentioned on that signature card.

Q. In other words, either Mr. Powell, Mr. Jackson, Miss——

The Court: Jones or Perry?

Q. —Miss Jones or Miss Perry?

Mr. Bolan: No, your Honor. The card shows any two of the names, that is, of the president, treasurer or co-treasurer.

The Court: All right.

Mr. Bolan: Which would be Mr. Powell, Mr. Jackson, or Mrs. Perry.

The Court: Yes.

Mr. Feldman: I see. That is all right.

Q. Now, Mr. Ludeke, do you know Mr. Lennon? (467) A. By name. I might have seen him in the bank, but I don't know him.

Q. If Mr. Lennon came to you and presented to you a check drawn on the Tenants Protective Association, Inc., and signed by him, would the bank have honored the check? A. May I again make clear one point on that?

Q. Surely.

Mr. Bolan: I object to that question, your Honor. It is too broad.

The Court: I think it is perfectly proper.

The Witness: May I get clear on one point?

The Court: Yes, but it seems the witness does not quite understand something about it. What is your problem?

The Witness: My problem is this: Any check to be cashed has two sides. In other words, your Honor, I could pass on the front of the check and then——

Q. I can clarify that for you, Mr. Ludeke. I might have confused you. A. All right.

Q. What I am saying is this, or what I meant to say was this: A check being presented to the (468) bank in the place where the officer would sign it. In other words, I am not going to the bank with the check to be cashed, but suppose a check, or the Tenants Protective Association's check was signed only by Mr. Lennon, drawn only by Mr. Lennon, would the bank have honored that check? A. No

Mr. Feldman: I have no further questions.

The Court: Any further questions, Mr. Bolan?

Mr. Bolan: No, your Honor.

Mr. Feldman: Oh, I am sorry, sir. I think I omitted to ask one question, but if I did, your Honor will please correct me.

The Court: Go ahead.

By Mr. Feldman:

Q. As far as the bank was concerned, Mr. Ludeke, was this a corporation account or an individual account?

The Court: He said it was a corporation account.

A. A corporation account.

Q. Was there a resolution on file? A. Yes.

Q. Would the bank have kept or handled a corporate account without a corporation resolution (469) authorizing the bank to issue monies in accordance with that signature card and the resolution? A. Would you repeat that?

Q. Surely, Mr. Ludeke. Would the bank ever purely on the signature card honor checks drawn by the persons who appear on those signature cards without a resolution from the corporation with the corporation's seal on it authorizing the bank to do so? A. No, we have the signature card and the resolution in the case of a corporation both on file and, of course, as far as the cashing and handling of checks is concerned, the staff of the bank goes strictly by the signature card.

Q. I understand. In other words— A. We don't refer to the resolution every time a check comes in.

Q. You don't refer to the resolution? A. We don't always refer to the resolution.

Q. Actually the signature card is used, and that is necessary if you don't recognize the signature to compare the signature on the check with the signature on file with the bank? A. Yes.

Q. So that the bank would know that the check (470) is properly signed? A. That is right.

Q. Isn't that right? A. That is right.

Q. Now, if you know, sir, when a person who does not have an account at the bank comes to the bank to cash a check, and let us assume that the check is certified, would the bank cash that check without requiring identification? A. As far as cashing any check is concerned, the bank assumes the responsibility to whom it is—for whom it is cashing the particular check. In other words, it is up to the discretion of the bank to establish the identification of the payee.

Q. Now, Mr. Ludeke, as a matter of custom at your branch, let us take this particular case, do you know who Paul Klein is? A. I have heard his name, but I don't know who he is.

Q. Now, if a Mr. Paul Klein came in with a certified check, did not have an account at your bank, and you were at the teller's window, what would you require? A. That I don't know. Mr. Klein, in other (471) words——

Q. That is right. A. Mr. Klein has no account, that is?

Q. That is right. A. I would not cash his check.

The Court: Would you cash a certified check?
The Witness: No.
The Court: Payable to him?
The Witness: No.
The Court: You would not?
The Witness: No.

Q. Suppose he identified himself satisfactorily? A. That all depends on the identification.

Q. That is right. In other words, if he identified himself and satisfied you that he was Paul Klein, you would cash it? A. If I am clearly satisfied——

Q. Right. A. —of his identification, then I have the right to cash it.

Q. And the amount of identification that you would require at any given moment would depend on the person in front of you? A. It all depends on the circumstances.

(472) Q. That is right. And at this moment, Mr. Ludeke, do you know or does anybody in the bank know whether Mr. Klein presented himself and identified himself and cashed the check? I am talking about the certified check we have under discussion now. A. No, I don't know.

Q. So that he could have or could not have? A. Right.

Mr. Feldman: I thank you.

Re-direct Examination by Mr. Bolan:

Q. But in any event, Mr. Ludeke, the fact that the check was cashed indicates that somebody identified himself as Paul Klein, is that right? A. We surmise that because we have no record of a deposit of this particular check, so we surmise that the check was negotiated over the window.

Q. Yes? A. But I wouldn't know the circumstances and particulars of this particular transaction.

Q. But you are able to say, though, that the check was either paid to Paul Klein or someone who represented himself as Paul Klein? A. Most likely so, yes.

(473) *Re-cross Examination by Mr. Feldman:*

Q. Mr. Ludeke, if I may, sir, how long have you been with the bank up at 311? A. 29 years.

Q. 23 years? A. Yes.

Q. Let me ask you this: You are not at the teller's window? A. Not at the present time, no.

Q. But you were at one time? A. I have been.

Q. How many tellers do you have up there? A. There are, of course, averages.

Q. It varies. A. But let us say five.

Q. Do those tellers know Mr. Lennon, so far as you know? A. Some of them may.

Q. Do you know Mr. Lennon? A. The gentleman over there? I have seen him in the bank.

Q. Do you know his name? A. Well, you say he is Mr. Lennon.

Mr. Feldman: No further questions.

(1474) *Re-direct Examination by Mr. Bolan:*

Q. How long were you a teller, Mr. Ludeke? A. I would say from 1944 until '52, roughly. I would have to look up my record; I can't tell you exactly.

Mr. Bolan: No further questions.
Mr. Feldman: No further questions.

New York, October 15, 1956,
10:30 o'clock a.m.

Trial resumed.

The Court: You may call your next witness.

Mr. Bolan: The Government calls as its next witness the Rev. Adam Clayton Powell, Jr.

Adam Clayton Powell, Jr.—for Government—Direct.

ADAM CLAYTON POWELL, JR., called as a witness on behalf the Government, being first duly sworn, testified as fol s:

Direct Examination by Mr. Bilowit:

. Dr. Powell, are you connected with the Abyssinian tist Church? A. I am, sir.
. What is your position there? A. Minister.
. How long have you been a minister? A. Twenty- years.
. And you are also a Congressman from New York , is that right? A. Yes, sir.
576) Q. For how long? A. Twelve years.
. And from which district? A. The 16th Congressional
. You, of course, know the defendant Acy Lennon, is right? A. Yes, sir, I do.
. He is a Congressional secretary to you, is that right? Yes, sir.
. And for how long has he been in that position? A. out ten years.
. Now, Dr. Powell, has any pressure in any manner, pe or form, directly or indirectly, been put on you by White House or anybody in the United States Govern t in connection with this case?

Mr. Feldman: Your Honor, I object, and I think it is the back door introduction of trying to inject an extraneous issue in this trial. So far as I know this is a tax evasion trial and not a political arena.

The Court: This is purely a tax evasion trial and there are no politics going to enter into this case as long as I am sitting on this Bench. This is purely a question of whether the defendant is guilty of evading (677) taxes as set forth in the indictment.

Discussion

You called the witness, Mr. Bolan, and I will sustain the objection.

Mr. Bolan: Your Honor, may I be heard on that?

The Court: I will sustain the objection at the present time. If later on the question becomes appropriate, I will allow it. Go on with the evidence in the case.

* * * * * *

(Witness excused.)

(915) Mr. Bolan: I have no further witnesses, but I would like to read a portion of the Government's Exhibits 1 to 4 to the jury.

The Court: The tax returns?

Mr. Bolan: The tax returns.

The Court: All right. You may pass them around, of course, and point out the things that you have in mind, but do not read the whole tax returns.

Mr. Bolan: No, I just have one particular item and I will pass the returns around.

The Court: All right.

Mr. Bolan: I call your attention to the part in the return which requires a listing of dependent relatives.

For example, on the 1949 return, we have "Names of other dependent relatives," and we have listed under that Barbara, Della, Acy, Jr. and William.

And in the next column we have "Relationship," and then there is daughter for Barbara, daughter for Della, son, Acy, Jr., and son for William.

Then we have a third column for the address, and I call your attention to the fact that on each of the returns there is a blank space next to Acy, Jr., (916) son, and William, son.

Mr. Feldman: Your Honor, that is inaccurate. There is also a blank space next to all of them.

Mr. Bolan: That is right.

The Court: In other words, if the dependent relative does not live in the same house as the taxpayer, the return instructs you to fill in the address of the dependent relative, but if he or she lives in the same house then it is not necessary to fill in the address.

Anything further?

Mr. Bolan: No, your Honor, that is all. The Government rests after the jury has had a chance to examine the returns.

The Court: All right, and do you wish to make some motions, Mr. Feldman?

Mr. Feldman: I do, your Honor.

The Court: How long will you take in making your motions? How long do you anticipate it will take you to make your motions?

Mr. Feldman: It will be quite some time. A lot depends on how many questions the Court asks, as the Court well knows, and I don't know how much time will be involved.

The Court: Well, I want to allow sufficient (917) time for you to put your motions on the record as fully as you need, or as much time as you need to dispose of it.

Mr. Feldman: Yes.

The Court: And that should be done in the absence of the jury, of course, under the rules, so we will adjourn until two o'clock this afternoon so far as the jury is concerned, and I will hear your motions in the robing room, and then we will resume the trial at two o'clock this afternoon.

Discussion

Mr. Feldman: May I have two or three minutes' recess at this point before we join the Court in the robing room?

The Court: Surely, and the jury will return at two o'clock, and then Mr. Feldman will be prepared to proceed with the trial at that time.

Mr. Feldman: Yes.

The Court: All right, the jury is excused until two o'clock. If you want to examine the returns, you do not need to leave now, just sit here and look at them.

It is about time that the jurors got a chance to look at these exhibits, I think.

A Juror: Your Honor, on the returns, there are two sides to each return; are we only to look at the (918) dependency list now?

The Court: No, you can look at anything you want. All of the returns are before you and they are all important in this case.

Mr. Feldman: Your Honor, I take it that there would be no objection if I am permitted to leave the room?

The Court: You can leave the room now and return to the robing room in about five minutes or so, and then I will hear your motions.

Mr. Feldman: Good enough, sir.

(The following proceedings took place in the robing room:)

Mr. Bolan: We were waiting for the jury to get through looking at the returns, your Honor.

The Court: And they have left now?

Mr. Bolan: Yes, sir.

The Court: Mr. Feldman, you may proceed.

Discussion

Mr. Feldman: Your Honor, the first motion I should like to make would be to strike the testimony of the witnesses Kent, Klein, Anna C. Perry, Harrison Jackson, Adam Clayton Powell, Hanley Bulson, as not being material, relevant or pertinent to the issues in the case.

(919) The Court: You want to strike out all of their testimony, or only their testimony about this amount of——

Mr. Feldman: $1500.

The Court: —$1500?

Mr. Feldman: That is right.

The Court: Because I think some of these witnesses testified to other things which may be helpful to one side or the other.

Mr. Feldman: That is right.

The Court: Therefore, I would not consider striking all of their testimony. I will consider your motion, therefore, about striking the testimony with reference to the $1500.

Mr. Feldman: That is right.

The Court: Which is alleged to be commissions on the sale of the apartments.

Mr. Feldman: On the sale of the apartments; yes, sir.

The Court: Mr. Bolan, what do you say as to that?

Mr. Bolan: Your Honor, I vigorously oppose such a motion. The question here is whether the income received from Mr. Kent was partially Mr. Lenton's, or (920) whether it was entirely that of the Tenants Protective Association.

Now, it is the Government's position that the Tenants Protective Association served as a mere conduit for this income received from Mr. Kent, and——

Discussion

The Court: None of that was proved to have gone personally to Mr. Lennon, was it?

Mr. Bolan: Yes, your Honor, that is correct, but if I may say there are numerous cases which hold that it is not necessary for the taxpayer to receive the income, it is not necessary at all, and I have numerous citations to that effect.

The Court: Well, in this case the evidence was by Mr. Kent that he made an arrangement that if Mr. Lennon or Mr. Hampton would sell these apartments he would make a payment to the Tenants Protective Association.

The testimony was that after the apartments were sold he made a payment of $3,000, and this went into the account of the Tenants Protective Association. There is other testimony which, if is believed, to the effect that the $3,000 then was paid out to Mr. Klein.

(921) There is no testimony that any of it ever went to Mr. Lennon. There is no testimony that Mr. Lennon was himself receiving the money, or that the people who paid the money understood that Mr. Lennon himself was to receive the money.

Maybe the Tenants Protective Association violated the law in filing a return, or maybe they violated the law in paying the money out to Mr. Klein, but that is not the issue in this indictment.

The payment of the money to Mr. Klein, or whoever got the money, it certainly was not Mr. Lennon from any testimony that was involved in the case, was not made by Mr. Lennon himself and, according to the testimony, it was made by the officers or representatives of the Tenants Protective Association.

There was no more reason from the testimony in this case to say that Mr. Lennon controlled this

money than Mr. Hampton did, or that Congressman Powell did, or anybody else.

Under the circumstances I will grant the motion to strike out all testimony about the $3000 and remove that from the case.

(922) Mr. Bolan: Your Honor, may I be heard just on one point?

The Court: Yes.

Mr. Bolan: You say that there is no evidence that Mr. Lennon had controlled the $3000.

The Court: By himself.

Mr. Bolan: Well, that would be so in any case in which a corporation is involved, but Mr. Klein testified this morning that Mr. Lennon and Mr. Hampton told him when he met them, they said to him, "Don't you remember you came to us for a loan from Congressman Powell?"

The Court: Yes.

Mr. Bolan: And that they then proceeded to give him the loan through the Tenants Protective Association.

The Court: All the testimony was that it went through the Tenants Protective Association.

Mr. Bolan: Your Honor, that would be so if that were the case, but if that were the determining rule, then you could never conceivably convict a defendant for tax evasion where the money was received by the corporation, because it is obviously the corporation which pays it out, and if you are going (923) to say that Mr. Lennon personally did not pay it out, then obviously you could never get a taxpaper convicted, because it is the corporation which pays it out.

The Court: But the cases do hold that an individual may be held criminally responsible for money

received by the corporation, and those are cases where the corporation was merely a fictitious conduit for that individual, and in a situation where the money was paid to a corporation, or where the money was paid out by the corporation and not to the taxpayer, and it was paid out not by action of the taxpayer but by action of the people who controlled that corporation, but then I do not believe there is sufficient evidence to include that in this case, this being a criminal case, as income of the taxpayer.

I will strike out all evidence about that $1500.

Now, what other motion do you have?

Mr. Feldman: Your Honor, at this time I should like to move to renew my motion made before the trial began with regard dismissal of the indictment for failure to state a crime within the purview of the law here involved, and I will point (924) out to the Court that there is a mistake in the indictment which is not too serious, but it was improperly drawn in that in the last count, the sixth count, the 1954 count, it refers to 145(b) and, as a matter of fact, 145(b) had ceased to exist at that time, and the 1954 Code, which in effect I think is 7201——

The Court: Which was substantially the same.

Mr. Feldman: Which was substantially the same.

Well, I think there is not enough sufficiently as to that claim, your Honor, but I just point that out.

The Court: Well, I think the citation of the statute in the indictment, which is surplusage in effect, is not a material factor unless the defendant has been misled.

Mr. Feldman: Yes.

The Court: So, on that ground I will not——

Mr. Feldman: Not on that ground.

The Court: What other ground?

Mr. Feldman: That was just a collateral point of information to the Court that I was aware of the situation.

(925) The ground on which the motion was originally made is the same as now renewed, your Honor, and I think the Court has recalled it.

The Court: I can't see any basis for setting aside the indictment on the basis of the indictment.

Mr. Feldman: I respectfully except.

The Court: I deny the motion.

Mr. Feldman: I assume it is denied?

The Court: Yes. What is your next motion?

Mr. Feldman: My next motion is a motion made under 3616(a), and you recall I mentioned that motion to the Court before the trial began, or that is the motion that I made before the trial began, and I now make the motion again under 3616(b) or, rather, (a), your Honor, and so we have to go now to the law to find out about that, and we have a situation of filing a false statement to a Collector of Internal Revenue for the purpose of evading any payment or assessment, and the issue comes about in this fashion, your Honor:

All of the cases which have recently come about, where 3616(a) and 145(b) were considered, cases such as the Berra case, the Moran case, the (926) American Stevedoring case, and I am trying to recall all of those cases, your Honor, distinguish 3616(a) and 145(b) under a set of circumstances in which in addition to the alleged falsity of the return there were other overt acts.

With the exception of Judge Frank in the Circuit Court, none of the judges have apparently been

made aware of the import of the language in the Berra case, dealing with this question of an overt act, and if you go to the decisions rendered by Judge Hincks, by Judge Palmieri, by Judge Kaufman in the Dodson case and the like, we find that there is an almost complete ignorance of the factual situation which existed in all of the other cases.

The Court: Now, to what is this addressed? Is this on the statute of limitations?

Mr. Feldman: It is, your Honor.

The Court: And you say that the statute of limitations has run in this case?

Mr. Feldman: It has run on certain counts; it has not run on all of them, and the reason why I say that, your Honor, is this:

Bear in mind the proof adduced in the case, and taking as we must on a motion of this sort, the (927) best view of the Government's evidence, all the Government has been able to prove is nothing more than an act which could only be accomplished by the filing of a false return.

And we have a further complication. We have the dependency situation which exists in the first four counts.

Now, if we divorce the dependency situation from the other items in this count we can get a clearer picture of the motion that I am making.

With regard to the dependencies, your Honor, there is nothing involved in the case other than the making of a false return.

The Court: A false return would be intent to defeat and evade part of the income tax.

Mr. Feldman: Yes, but we have come squarely with regard to the dependency issue, we have come

squarely into the situation of competency by both the majority and minority of the Supreme Court in the Berra case; namely, that this is a situation where the only act is the filing of the false return.

The Court: Suppose you file a false return with intent to evade the income tax, isn't that also subject to Section 145(b)?

(928) Mr. Feldman: Well, the problem is this, that you now have from the language of the Court itself at this moment, you have now a complete section, that is, 3616(a). In other words, 3616(a) refers specifically to the making of a false statement.

The Court: And you say that he cannot be prosecuted on both?

Mr. Feldman: He can't be prosecuted on both under the traditional rule that the lesser crime controls.

The Court: Well, hasn't that been upset by the United States Supreme Court?

Mr. Feldman: No, sir, it has not. As a matter of fact, it is the Berra case which has pointed out the power for me to address the motions which I have to the Court.

Up until the Berra case the only decision we had was in the Dillon case, and in the Dillon case, your Honor, you again had the overt act, and you had the Court dealing with a situation where the attempt as distinguished from the intent, and this is very interesting because under the 1939 law, and 145(b) deals with that, deals with the attempt, whereas (929) 3616(a) deals with the intent, and the philosophy behind that is that, and we had a finding of the Court, and also actually from the tax philosophy point of view now, nobody ever successfully evades

taxes. He may not pay them but he does not successfully evade them, and so the only crime that you deal with in 145(b) is the attempt to evade taxes, and the crime that you deal with in 3616(a) is the intent to evade the taxes.

And that is the only case that I have come across, your Honor, where we deal with a situation, particularly the dependency situation, where we deal with a situation in which the only way in which the alleged evasion could be accomplished would be by the filing of a false return. No other act is involved.

The Court: Yes, but isn't that true in any case?

Mr. Feldman: No.

The Court: You file a false return with intent to evade the law, and then you come under Section 145(b)?

Mr. Feldman: No, that is just the point, and let me illustrate what I mean.

(930) The Court: Yes.

Mr. Feldman: You take the situation which has just been resolved, the $1500 situation, now, surely in addition to the filing of the false return there would have to be or there would be, assuming that the Government proves a case, there would be the receipt of the money, the secreting of the money, the forming and complexity of overt acts which would fall within 145(b), but in the case of the dependents, your Honor, you are dealing only with a situation where there is no overt act.

The Court: Isn't the overt act the mere reporting of the dependents with intent to evade the tax?

Mr. Feldman: No, under the cases, your Honor, as I understand them, the mere filing of the return is not the overt act.

The Court: No, or it has to be a filing with intent to evade?

Mr. Feldman: No. You see, we do not have the intent situation in 145(b) as we have the attempt to evade.

The Court: All right, the attempt to evade.

Mr. Feldman: The attempt to evade.

(931). The Court: Yes.

Mr. Feldman: And the attempt to evade has been found by the courts to be always the overt act.

In the Moran case he received bribes and he did not report it; in the American Stevedoring case there were shakedowns of shippers involved, and in the Dillon case there was income received and unreported.

The Court: And in this case you have in each one of the years income received and unreported.

Mr. Feldman: May I interrupt?

The Court: And in four of the years we also have the question of intent.

Mr. Feldman: May I interrupt, your Honor?

The Court: Yes.

Mr. Feldman: For the present you can't rule out Ford and dependencies. The dependencies and Ford have to be together for the purpose of making a case. Actually what has the proof been in this case? If things were much clearer for the Court and the jury, it seems to me that the grand jury should have issued a separate count for the dependents and then a separate count again for the Ford situation.

(932). Now, you can't say that the Ford situation relates to the dependencies any more than you say that the dependencies relate to Ford. The payment——

The Court: Just a minute. Are you saying fraud or Ford?

Mr. Feldman: Ford.

The Court: All right.

Mr. Feldman: And that the Government referred to in 1949, '50 and '51, the payments.

The Court: All right.

Mr. Feldman: I think that they have to be and must of necessity be considered separately.

The Court: Well, if the Government's proof is accepted by the jury, then in each one of these years there was income which was not reported, in four of the years I think it is, there was also the claim of the dependencies which the Government claims was improper, in that two of those persons were not dependents. Under these circumstances you have a situation where the defendant filed a return which the Government claims is incorrect, and that it was done with intent to evade the income taxes. I can't see much to that argument that you have there.

(933) Mr. Feldman: Well, I make it quite seriously, your Honor, and you realize that I do.

I point out to the Court that what the Court is doing is taking the year as a whole and saying is this defendant guilty of evading taxes for the prior year. But unfortunately, or fortunately, depending on how you view it, you are going to give, you have to give two separate issues to the jury, and then taking 1949, '50 and 1951, I imagine, although theoretically the question may be sustained on either of those or both, the situation may very readily arise where the jury will say, "We don't accept the dependency story, we don't think he evaded on the dependency story, but we do think he evaded on Ford," or vice versa.

Discussion

Now we run into this situation. I think the Court must know by some manner or means whether the jury's finding is on one or both.

The Court: Your contention is that if a person claims dependents on his return that he is not entitled to, he cannot be prosecuted under Section 145(b)?

Mr. Feldman: That is right.

The Court: Where is there any case that (934) says that?

Mr. Feldman: This is the first case in which such prosecution has been attempted to this point.

The Court: What is the difference between claiming a dependent who is non-existant and taking a deduction which is non-existant, such as taking charitable contributions which are non-existant? You say that that would be the same?

Mr. Feldman: I would say that substantially that would be the same, because it would be the simple act of writing something into the return with the intention to evade the tax, which is the language of 3616.

The Court: Then suppose he writes something in his return which is not a statement of his full income with an intent to evade. Why is that any different?

Mr. Feldman: For this reason, because in addition to that you have the taxpayer coming and receiving something and secreting it somewhere, to hide it from the Government.

The Court: That doesn't have to be proved in an income tax case; you don't have to prove that (935) he secreted it. But you have to prove that he got it and he didn't report it.

Mr. Feldman: That is the point. The proof that he got it and didn't report it is the proof that he secreted it.

The Court: You think a prosecution under 145(b) can be brought only in a case where the income was not reported but that if he overclaimed deductions, exemptions or anything like that, then he cannot be prosecuted under that section?

Mr. Feldman: I think so, sir.

The Court: Well, I don't agree with you on that. What is your next point?

Mr. Feldman: Exception.

The next point that I make, your Honor, deals with this question of dependency. And I move, if your Honor please, for a judgment of acquittal at the end of the Government's case in that the Government has not established a case sufficient for the Court to now conclude that a reasonable man couldn't have doubts concerning the innocence or guilt of the defendant in that particular issue.

The Court: That is not the issue which I (936) have to decide when I pass upon such a motion.

Mr. Feldman: Basically, that is the language of the issue.

The Court: The issue I have to decide is whether there is sufficient evidence to go to a jury. They have to decide the question beyond a reasonable doubt; I don't have to decide the question beyond a reasonable doubt.

Mr. Feldman: No, you don't have to decide the issue beyond a reasonable doubt. You have to decide whether there is sufficient evidence to go to the jury.

The Court: On which a reasonable man could reach a conclusion.

Mr. Feldman: Could reach a conclusion.

The Court: That is right. I understand.

Mr. Feldman: Now the bill of particulars is very specific in that it says there was a claim of false dependents. Nowhere in the indictment or in the bill of particulars is there any statement that the defendant was entitled to any lesser number of exemptions than he took.

Now it would seem quite clear to me that (937) before a man can be criminally prosecuted for taking an excess number of exemptions certainly the Government should take a position on that excess number of exemptions. In other words, to say that he was not entitled to six exemptions but only entitled to four. Because otherwise you run into this problem: You are having the Government come in and saying that he evaded his tax by the mere fact of taking false dependents when the plain proof required, in order for a criminal case to be sustained, would be that he was entitled only to so many exemptions.

The Court: He claims six; he took his own position that he was claiming six. The Government says that two of those are not proper and therefore evaded tax by claiming those. That is the issue of fact for the jury.

Mr. Feldman: What evidence has been presented? The only evidence that has been presented that the defendant was not entitled to—if we assume that there is any evidence at all concerning exemptions, and I submit to your Honor that there is not—that the only evidence that has been presented here, positive evidence in the Government's point of view, (938) is the statement by Joe Ford to the effect that

he knew the defendant, knew him well over a number of years. And then what did he say? Did he say that he knew of his own knowledge that the defendant did not have four children, that he only had two? No. The Court will recall, from reading the transcript, that Joe Ford's testimony was that he never heard——

The Court: How about the daughter's testimony?

Mr. Feldman: The daughter's testimony, if your Honor please, only strengthens the defendant's situation, because she says that living at home, she and her sister, she heard rumors, but she at no time said that he had no other sons.

The Court: She said they never had any sons living with them. She is a girl, I suppose, of 20 or so; she is in college. She never knew of any brothers. She had heard rumors of the illegitimate children. It seems to me that there is sufficient evidence there to go to the jury.

Mr. Feldman: I don't think there is, your Honor. As a matter of fact——

The Court: How could the Government ever (939) prove that a man had any illegitimate sons?

Mr. Feldman: The answer to that, your Honor, is this, that whether it could ever prove it or not is not our issue here. The issue here is, how did they attempt to prove the issue?

The Court: They don't have to prove it in this case. They presented proof that the member of the family never knew of any sons but heard rumors of them. Does that mean that the Government has to go out and examine everybody in the United States to find out if any of them are illegitimate sons of the defendant?

Discussion

Mr. Feldman: No.

The Court: What possible other proof would there be?

Mr. Feldman: Because the courts have to be realistic and know the sensibilities of the society in which they live. And in considering the evidence, and knowing that, your Honor, you must bear in mind that the Government here has made no attempt at all beyond a story of Ford.

The Court: And the daughter.

Mr. Feldman: And the daughter. He made no (949) attempt at all to establish the number of dependencies one way or the other.

The Court: But they have no power to compel the defendant to testify on the matter. The tax returns would indicate, on their face, that these two other dependents were living with the father. The daughter said——

Mr. Feldman: Only for certain years.

The Court: In those years, yes.

Mr. Feldman: No. You must bear in mind that during the course of those years there was a change. As I recall it, that in certain of those returns there wasn't even a return that he stated whether they were living with him or not.

The Court: In the return there is a space that if they live somewhere else, give their address. In certain years anyway.

Mr. Feldman: '49 has the requirement, your Honor. 1950 has the requirement. '51 I don't believe so.

Mr. Bolan: Yes, it does.

The Court: Just off the record.

(Discussion off the record.)

Discussion

(941) Mr. Feldman: There have been years in which that——

The Court: All of the years involved in this case and even up to the present time, you put the address of the dependent and whether you contribute more, have to contribute more than half of their support.

Mr. Feldman: But, your Honor, the question here —I am sorry.

The Court: The thing is that here there was proof that there were no such sons living at home, by the daughter, who was a member of the household; she never knew of any such sons. The mere fact that she said she heard rumors of illegitimate sons it seems to me is no proof at all. I think the Government has established enough to go to the jury.

Mr. Feldman: I don't think it has, your Honor. As a matter of fact, I think that if the Government has established enough to go to the jury on this case, then the degree of criminal proof required is far less than in the civil case.

The Court: No, because the jury has to be convinced beyond a reasonable doubt in this case.

Mr. Feldman: Is the Court——

(942) The Court: And the issue which you can argue to the jury is whether they proved it beyond a reasonable doubt.

Mr. Feldman: But is the Court now saying that the evidence presented by the Government is of such probative value on the issue that it could be submitted to the jury and that, as the Government stands at the close of its case, a reasonable man could not entertain a doubt?

The Court: A reasonable man could conclude from this testimony that there were no such sons, from

the testimony of the daughter that she never heard of them, the testimony of the daughter that they never lived in the home; where she has lived in the home all her life; the fact that the returns indicate no other address for these sons. I think a reasonable man could conclude that these sons were fictitious. But whether he concludes it beyond a reasonable doubt is another matter.

Mr. Feldman: But suppose that the reasonable man so concluded, does that mean that the Government has established that there was tax liability, that he was not entitled to the six exemptions which the Government didn't question?

(943) The Court: That is something which is not the burden of the Government at the present time. He has claimed six exemptions. If the Government established that two of those are false and thereby he evaded certain income tax, then I think they have enough to go to the jury on.

Of course the defendant can always offer proof if he wants to that he had a son and the name may have been a little different, or something like that; there may have been a mistake, but I think there is enough of this evidence to go to the jury on that.

What is your next point?

Mr. Feldman: Exception, your Honor.

* * * * * *

Mr. Feldman: Now, gentlemen, do we have any other motions that I have omitted in the course of these many.

The Court: You move for a verdict of acquit- (964) tal on the ground that the evidence is insufficient to sustain the charges.

Discussion

Mr. Feldman: Of course, your Honor.

The Court: I deny your motion and you have an exception.

Mr. Bolan: Your Honor, you have already stricken the testimony by certain witnesses regarding the Tenants Protective Association. I move to have stay in or allow to remain in the record for the sole purpose of the credibility of the witnesses those statements which contradict the testimony of other witnesses, particularly with respect to Congressman Powell who testified——

The Court: I am not striking the testimony of a witness as a whole in the case because the witnesses, nearly all of them, testified on more than the $3,000.

Mr. Bolan: Yes.

The Court: Therefore, all I am saying is that I will take from the jury any consideration as to whether that $3,000 was income to Lennon. I will direct that they disregard any testimony relating to that. I will explain to them why I am doing that.

Mr. Bolan: My point is this: May I comment (965) on the contradictory statement as to the——

The Court: On what other issue?

Mr. Bolan: For example, if there is an issue as to the testimony given by Congressman Powell.

The Court: To what other issue would it relate?

Mr. Bolan: No. He has testified to the tax service and partners and things of that sort.

The Court: All that he testified about the tax service was that there was no rent charged, which I thought was probably helpful to the Government. I don't see what else he testified to that has anything to do with the tax service.

Mr. Bolan: I would have to read from the——

Discussion

The Court: I don't think we want to get into any issue of credibility of Congressman Powell on some other issue, unless it directly relates to those other issues.

Mr. Bolan: Well, the question of the partnership, whether he considered Mr. Lennon a partner of Mr. Ford. At first he said he was just one of many and then he later said——

Mr. Feldman: Your Honor——

The Court: Even so, let me ask you this: (966) What difference does it make whether they were partners? Mr. Ford has testified that he paid certain money to him.

Mr. Bolan: Your Honor, apparently an attempt is being made that he was just one of many and got a few dollars.

The Court: Suppose he was? Suppose he was one of many? Suppose he was a partner? If he got 1600, he got it as compensation, according to Ford.

Mr. Bolan: Yes, according to Ford. But to bolster Ford's testimony, it would go against Ford's testimony if Mr. Lennon were one of many, we assume if he were one of many that the rest of these many would have been paid equivalent amounts.

The Court: I don't see that it has anything to do with it.

Mr. Feldman: I advise the Court, in fairness, that if any such statement is made in summation or argument to the jury I will be on my feet demanding a statement from the Government as to whether or not he is attempting to impeach his own witness.

The Court: But I think we have to eliminate completely this Tenants Protective Association from this picture. I don't believe the Government has

es- (967) tablished any case on that $3,000 check here in so far as this defendant Lennon is concerned. I think you have to be very careful in any argument that you make to keep that in mind.

Now, I am going to explain to the jury why I am taking that out of consideration in the case.

Mr. Bolan: Yes. Well, I make the point merely on the issue of credibility. I don't know if there is——

The Court: It depends on what credibility——

Mr. Bolan: If a man has lied about some other things, say about the Tenants Protective Association, may I not comment on that? Not for the purpose of establishing any income, but merely to show this witness has been contradicted under oath by another witness.

The Court: But on what issue does that relate to, though?

Mr. Bolan: I say any question that Congressman Powell has testified to, apart from the Tenants Protective Association.

The Court: I don't see that he has testified on anything that has anything much to do with any of the other cases on which you want to contradict him. But (968) that is up to you.

Mr. Bolan: It depends on what Mr. Feldman will say in his closing statement, if he relies on Congressman Powell.

The Court: I realize that.

* * * * *

(980) Mr. Feldman: The defense calls as it next witness Mr. Iden.

Homer H. Iden—for Defendant—Direct

HOMER H. IDEN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Mr. Feldman: Mr. Bolan, may I have Exhibit 9, please?

(Mr. Bolan hands exhibit to Mr. Feldman.)

Direct Examination by Mr. Feldman:

Q. Mr. Iden, by whom are you employed? A. Chase Manhattan Bank.

Q. At what branch, sir? A. City of New York Worth Street Branch.

Q. Is that the Importers & Traders Bank? A. Formerly named that, yes, sir.

Q. Now, Mr. Iden, did the bank at my request pursuant to subpoena search its records to determine whether or not one Joseph E. Ford had an account with that bank? A. Yes, sir.

Q. And so far as——

Mr. Feldman: I will withdraw that.

Q. Mr. Iden, what position do you occupy with the bank? (981) A. I am assistant treasurer.

Q. And are you at the Importers & Traders Branch? A. Worth Street branch, yes, sir.

Q. Is it now knowa as the Worth Street branch? A. Now known as the Worth Street branch.

Q. Is that the proper desgination? A. Yes, sir.

Q. And so far as you have been able to determine, Mr. Iden, did Mr. Joseph E. Ford have an account with the Chase National Bank during the years 1949, '50 and '51?

A. We have no way of ascertaining. Our records do not show at this time.

Q. Now, tell me this, if you will, Mr. Iden, you mentioned something to me when I discussed this with you and I asked the bank to go through its reco. s, you mentioned something to me about the bank records being destroyed after a period of six years; is that right, sir? A. That is right, sir.

Q. But are the central index files similarly destroyed? A. Yes, sir.

(982) Q. Now, in 1950 do your records show any account for Joseph E. Ford? A. No, sir.

Q. And in 1951 do your records show any account for Joseph E. Ford? A. No, sir.

Q. If Mr. Ford, Joseph E. Ford, was a depositor in your bank at your branch in 1951 would your records so indicate? A. It is quite possible, according to what month the account may have been closed.

Q. Well, assuming that the account was in effect in March of 1951 would your records indicate that? A. I would say yes, sir.

Q. Now, Mr. Iden, I show you a check, Government's Exhibit 9 in evidence, and ask you whether or not you recognize it as a check of your bank? A. Yes, sir.

Q. Now, I draw your attention to the fact that the check is made payable to Acy Lennon. A. Yes, sir.

Q. And I also draw your attention to the fact that on the back of the check the check is endorsed first by Acy Lennon and then by Joseph E. Ford? (983) A. Yes, sir.

Q. Now, Mr. Iden, you were with the bank in 1951? A. Yes, sir.

Q. And in 1949? A. Yes, sir.

Q. How long have you been with the bank? A. Since 1929.

Q. And are you familiar with the bank's operations and policies? A. Fairly so, yes, sir.

Q. Now, Mr. Iden, looking at that check and the endorsements which appear thereon, to whom would the bank as a matter of policy have paid that check if it were cashed? A. As a matter of policy we would have paid it to the last endorser.

Q. And who is that, sir? A. Joseph E. Ford.

Q. Now, that check indicates, does it not, that in 1949 Joseph E. Ford had an account with the bank? A. Yes, sir.

Q. Now, are you familiar, Mr. Iden, with the bank's policy with regard to the redemption of (984) currency which is in any way affected by the elements, such as by being burned, or by being soaked, or being charred, and the like? A. Yes, sir.

Q. And are you familiar with the policy employed by the bank or used by the bank in 1951 with regard to such currency? A. Yes, sir.

Q. Now, assuming, Mr. Iden, that in 1951 a depositor of the bank brought in several thousand dollars of charred currency in which the serial——

Mr. Bolan: I object, your Honor. There is no evidence of several thousand dollars.

The Court: Well, suppose he brought in some currency, would that be all right with you?

Mr. Feldman: Well, so that the Court's recollection may be refreshed.

The Court: Well, I mean, let us leave out——

Mr. Feldman: There was at least $1600 according to Mr. Ford, and the testimony——

The Court: That is not several thousand.

Q. Assuming, Mr. Iden, that a depositor of the bank brought in at least $1600 in currency which (985) had been charred, but on which the serial numbers were still visible would the bank have exchanged that currency for the depositor merely by his producing that money and getting fresh new money for it? A. No, sir.

Q. What would the bank have done? A. Accepted the money on a collection basis.

Q. And then? A. Forward it to the Treasury of the United States for redemption if possible.

Q. And would the bank have waited until it received the money back from the Treasury Department before turning it over to the depositor? A. Right.

Q. Now, Mr. Iden, is a record made of any such currency transactions? A. Yes, sir.

Q. And, so far as you know, are there official forms to be filled out and on file with the Treasury Department concerning such transactions? A. Yes, sir.

Q. Now, have you searched the bank's records for any such records? (986) A. We have searched the bank's records for that, yes.

Q. And have you found any such records? A. We have not found any records.

Q. Now, Mr. Iden, you used the expression "We would have sent it to the Treasury Department on a collection basis." Most of us in this courtroom are not bankers and will you be good enough to explain what is a collection basis? A. Well, an item being left with the bank to be handled where they would have to send it out to a paying agent of some sort for payment, before we could pay the customer or individual that came in the bank, why, it cannot be treated as a cash basis where we exchange cash for cash.

Homer H. Iden—for Defendant—Cross

Q. In other words, you accept it as sort of trustee and hold it and handle it for the depositor, and give him back whatever he is supposed to get? A. On that basis.

Q. Have you had any experience in the redemption of currency with the Treasury Department? A. Yes, sir.

Q. And on the basis of your experience, Mr. Iden, about how long does it take between the time (987) that you send money down to the Treasury before you get it back? A. I could not answer that.

Q. Well, would it be more than a day or two? A. Oh, yes; yes, sir.

Q. Would it be more than a week? A. Yes.

Q. More than two weeks? A. Quite likely so.

Mr. Feldman: I have no further questions.

Cross-Examination by Mr. Bolan:

Q. Mr. Iden,—. A. Iden.

Q. —with respect to the check which you are now holding, would it be the policy of the bank if Mr. Lennon, to whom that check is made payable, came to the bank with the check and had no identification, would it be the policy of the bank to require some identification? A. Yes, sir.

Q. And if Mr. Ford accompanied Mr. Lennon to the bank and was known to the bank, would the bank have paid the money over to the payee if Mr. Ford in the presence of the payee endorsed that check at his (988) request? A. No, sir.

Q. They would pay it over to Mr. Ford? A. Pay it to Mr. Ford.

Q. And if Mr. Ford satisfactorily identified the payee

and was known to the teller as Mr. Ford, and the bank knew that Mr. Ford was the man who had the account, and Mr. Ford signed his name, the teller would refuse to turn over the money to Mr. Lennon? A. Yes, sir.

Q. And why would that be, sir? A. He is not the last endorser.

Q. Would the bank turn over the money to Mr. Ford in Mr. Lennon's presence? A. If Mr. Lennon were there, yes.

Q. Now, with respect to the record as to the collection, how far back do those records go? A. A retention period of six years.

Q. So there would be records available for 1951? A. Quite possible.

Q. Well, are you sure? A. We have no record of Joseph E. Ford account in the bank at the present time, or at that time.

Q. And you are not sure whether your records go (989) back that far? A. Our retention period is six years and we have no way of telling after that.

Q. Well, this is 1956, is that right, sir? A. That is right, sir.

Q. So you do have records available for that period of time? A. For six years, yes, sir.

Q. And you have no account for Mr. Ford for the year 1951? A. Not according to our records.

Q. Well, if he had an account it would show it, is that right? A. That is right.

Q. At your branch? A. That is right.

Q. Have you checked any other branches? A. No, sir.

Q. Just checked this particular branch? A. Yes, sir.

Q. Had Mr. Ford had an account there in 1949? He had, is that right? A. Yes, according to this, yes, sir.

Clyde Noel—for Defendant—Re-direct

Mr. Bolan: No further questions.

(990) Mr. Feldman: No further questions, your Honor.

* * * * * *

CLYDE NOEL, called as a witness by the defense:

(1006) *Re-direct Examination by Mr. Feldman*:

Q. Mr. Noel, in 1952, if you know, that was the first year that Mr. Lennon operated the tax service, is that right? A. Would you mind repeating that question?

Q. I will withdraw it. Perhaps this may assist you. Do you know who Joe Ford is? A. I have heard the name Joe Ford, but I don't know him personally.

Q. I understand. Now, in 1951—in 1952, so far as you know, that was the first time that you were ever connected with Mr. Lennon in operating this tax service and working for him? A. Yes, I believe that was the first year I worked for Mr. Lennon.

Q. You never worked for Mr. Ford, did you? A. No, I did not.

Q. Do you remember the question that Mr. Bolan asked you a moment ago about whether or not there were any books of the tax service? A. Yes.

(1007) Q. Now, in operating a tax service, so far as you know as an accountant, would books have been required as such? A. Well, all businesses are required to have books.

Q. You are talking as an accountant now, aren't you? A. I am talking as an accountant now.

The Court: That is a matter of law, too, isn't it? You are supposed to keep a record of your income.

The Witness: Your income and expenses.

Q. When you were referring to books, you were referring to books of account, is that right? A. Yes, accounting books; books of income and expense.

Q. You did not intend by your answer to convey the impression, did you, that Mr. Lennon had no records? A. No, I didn't mean to convey that.

Q. And although you have no recollection of what records you had before you when you prepared the return, would you as an accountant have put anything down on that return as far as the figures are concerned without having some record before you? (1068) A. Go a little slower and repeat that.

Q. Surely.

Mr. Feldman: Mr. Reporter, will you read it?

(Question read.)

A. Well, I wouldn't have put any figures down without having some records, but whether they were presented to me or in the questionnaire by Mr. Lennon——

Q. Right. But what I am saying is that these figures didn't come out of your head? A. No, they didn't come out of my head or out of a hat, as far as I know.

Q. You prepared— A. And another—excuse me. Another thing about that return, that is the return for 1952, in preparing that return for 1952 that was prepared in 1953.

Q. Right. A. Right? The money that Mr. Lennon made the year that I worked there for him, that was the first year, would have to be declared on the 1953 tax return, and prior to that year I assumed, I heard, that he had a tax business, that he was in partnership, or him and Mr. Ford had worked together doing tax work.

So, well, I didn't know whether he had a loss or a gain or whatever it was.

(1069) Q. Or what he made out of it, is that right? A. Or what he made out of it or how he was declaring that.

Q. I understand.

Mr. Feldman: I have no further questions.

By the Court:

Q. Did you fill out this item about the dependents claimed by Mr. Lennon? A. Yes.

Q. You did? A. Your Honor, I did.

Q. You wrote in the names of the four persons there, is that right? That is your handwriting? A. I believe it is, your Honor. That is my handwriting.

Q. Where did you get that information from? A. From Mr. Lennon.

Q. How many years had you been preparing income tax returns up to that time? A. Since 1950, your Honor.

Q. Why didn't you fill out Schedule I on the return about those dependents?

Mr. Feldman: Schedule what, your Honor?

The Court: Schedule I (handing).

(1070) Mr. Feldman: Appearing where, your Honor?

A. That is close relatives. This is for children.

Q. Dependents claimed as close relatives. A. Well, close relatives were more or less cousins, aunts, uncles, and things like that. Children are——

Q. Children aren't close relatives? A. Well, they are close relatives, but they have a place here on front for

children. You don't have to go to the back for close relatives—for children; children are listed on the front of the return, your Honor.

Q. How long have you been preparing income tax returns? A. Since 1950, your Honor.

Q. You notice Schedule I says exemptions for close relatives, see instructions, then when you get the total you have to enter in item 1, page 1, the number of close relatives claimed above, and that requires you to state the relationship, what their income was, how much was contributed to them.

Haven't you ever filled that out on income tax returns that you prepared?

Mr. Feldman: Your Honor, may I object to the (1011) Court's question?

The Court: I want to find out. Here he says he filled that out and apparently he only filled out part of the return about the dependents. I want to find out why.

Mr. Feldman: My objection is this: On what basis does the Court come to the conclusion that he did not fill out something that he should have?

The Court: It is not filled out on the return.

Mr. Feldman: Why should it have been? The face of the return, 1952 return, item G, says, "List names of your children."

The Court: That is right.

Mr. Feldman: "Including stepchildren, legally adopted children, with 1952 gross income of less than $600 who received more than one-half of their support from you in 1952."

The Court: Page 1 of the return asks for a lot of things; page 2 you have to break it down in the schedules.

Mr. Feldman: No, your Honor. You mean on page 3, don't you? Or is that on page 2?

The Court: Page 2, Schedule I.

(1012) Mr. Feldman: Now, if your Honor would be good enough——

The Court: I am asking a question; let the witness answer.

Q. Why didn't you fill that out? A. Because if your Honor would turn back to page 1, item D, you will find that D says "Enter here number of exemptions claimed for close relatives listed in Schedule I, page 2."

And C says—D is different from C. C is for children. D is for close relatives.

Q. Children you consider are not close relatives? A. Well, the tax return is more or less self-explanatory. "List names of your children, including stepchildren, legally adopted children, with 1952 gross income of less than $600 who received more than one-half of their support from you in 1952. See instructions."

Mr. Feldman: Your Honor, would the Court be good enough to look at the face of the 1952 return? And you will notice there an entry——

The Court: I am just trying to find out. The witness has given his answer that he didn't consider that children were close relatives.

Mr. Feldman: The inquiry, with all due defer-
(1013) ence to the Court, the inquiry is as pertinent as saying not including somebody else's grandfather in Schedule I.

But the face of the return clearly states with regard to item C, "Enter the number of children listed."

The Court: Of course you know perfectly well that dependents may be other than children. And Schedule I relates to exemptions for close relatives. It says "Name of dependent relative. Also give address if different from yours, and relationship."

Mr. Feldman: But, your Honor, there is a difference in the——

The Court: I just want to find out why the witness didn't fill out that schedule. He has given an answer, he has given an answer. All right.

By Mr. Feldman:

Q. Mr. Noel, would you be good enough to look at the 1952 return? I ask you to go to page 2, I think it is, yes, of the return, and go to Schedule E. A. Schedule E?

Q. Yes. You will notice that that is a schedule which relates to income from annuities or pensions. Can you explain how that happens to be empty? (1014) A. How that happens to be empty?

Q. Yes. A. Because I didn't have any information to put in there.

Q. Schedule F, income from rents and royalties. A. The same reason.

Q. So that so far as you were concerned in the preparing of this return, you prepared it on the basis of the information you had and put that information in the place where it belonged? A. Where it belonged.

Requests to Charge

(1063) The defense rests, your Honor.

The Court: And you renew your motions?

Mr. Feldman: I do, sir.

The Court: Has the Government any rebuttal witnesses?

Mr. Bolan: No, your Honor.

The Court: Both sides rest?

Mr. Bolan: Yes.

Mr. Feldman: Yes.

The Court: And you renew your motions?

Mr. Feldman: I do, your Honor, all of them.

The Court: All of your motions, and the same rulings as before, and exception is noted.

You are ready, then, to sum up, Mr. Feldman?

(1139a)

REQUESTS TO CHARGE

I

The Court's attention is respectively referred to the fact that there are six (6) separate counts in the indictment.

With the exception of counts 5 and 6, each of the counts contains several items of alleged tax evasion.

Unless the significance of each year and each item is carefully explained to the jury, a misconception may arise which may cause some or all of the jurors to conclude that guilt on one item in one year may require a guilty verdict on the entire indictment.

Although many courts have striven to avoid such a consequence, their efforts have not been too successful. The Court is referred to the many decisions of the Courts of Appeals which have attempted to winnow from a general (1139b) verdict of guilty that portion of the verdict supported by the evidence and that portion which was not.

To avoid such a consequence the Court is respectfully requested to instruct the jury to advise the Court as to its finding on each of the items in each of the counts as well as to its general verdict on each count. In this manner the Court will be able to determine whether the general verdict reached was so reached within the limits of the Court's charge.

Usually the foregoing request is not required because an indictment in each of its counts specifies a particular act of evasion. To illustrate, normally Count 1 of the indictment would have been divided into 2 counts—one covering the dependency situation and one covering the Ford payment. Since the Grand Jury saw fit to issue an omnibus count it will become virtually impossible for this Court or for the Court of Appeals to test a possible guilty verdict against the evidence presented on each item in each count.

Under no circumstances must the use of an omnibus count be permitted to preclude the defendant from a fair trial by rendering difficult, if not impossible, the testing of the jury's verdict.

Requests to Charge

(1139c)

II

With regard to the dependencies issue:

The Court will recall that the indictment is framed in the negative. It is the government's claim that the defendant was guilty of tax evasion because he took "Acy, Jr." and "William" as dependent sons when they were not dependent sons.

The government's bill of particulars limits the government's case just to that issue. There is no claim by the government that the defendant was not entitled to six (6) exemptions.

Assuming that the only issue in the case related to dependents, the government's burden of proof is not met until the government proves that the defendant was not entitled to six (6) exemptions—no matter what the identity of such exemptions—because the defendant would have no additional tax due unless he was entitled to a lesser number of exemptions than he took. As a result of false identification of dependents, the defendant might be guilty of some other crime (making a false statement) but he cannot be guilty of a 145(b) crime.

An essential element, therefore, of the dependency issue is the number of exemptions taken by the defendant as compared to the number he was entitled to take.

(1139d)

A

"In order for the defendant to be guilty of tax evasion on his tax returns for the years 1949, 1950, 1951 and 1952, the jury must first determine the total number of

exemptions which the defendant was entitled to take for those years. The defendant's tax returns show that he took 6 exemptions for each of the years in question, namely, 1949, 1950, 1951 and 1952.

The law defines an exemption for those years as being a dependent person to whose support the defendant contributed at least 51% or more than half, and whose gross income was less than $600 during the year and bearing a certain relationship to the defendant. Thus, an exemption could be a son, and that includes an illegitimate son, a nephew, an uncle, a grandfather, a step-son, an adopted son, etc.

Before you can determine that the government has sustained its burden of proof on the dependency issue, you must determine whether the government has, beyond a reasonable doubt, established the number of exemptions to which the defendant was entitled."

B

"The government has the burden of proving beyond a reasonable doubt the maximum number of dependents to which the defendant was entitled."

(1139e)

C

"If you find that, regardless of what appears on the defendant's tax returns, the government has not established the total number of exemptions to which the defendant is entitled, then you need not carry your deliberations any further but must bring in a verdict of not guilty on the issue of dependencies in the indictment.

Requests to Charge

D

"The mere fact that the defendant may have taken as exemptions persons he was not entitled to take is insufficient to base a finding of guilty under this indictment. That fact standing alone does not establish that there was any additional tax due."

E

"If you find that the only evidence before you is the fact that the defendant falsely identified his dependents, then the government has not sustained its burden of proof and you must bring in a verdict of not guilty on the issue of dependencies in the indictment."

F

"The government does not contest the number of exemptions to which the defendant is entitled. For the purposes of this trial the government concedes that the defendant is entitled to six exemptions."

(1139f)

III

With regard To the Issue of the Ford Payments:

This is a credibility issue. Care must be exercised by the Court to avoid combining the Ford payments with the other issues in the case. Ford's testimony stands alone. It is uncorroborated. The elements involved in the Ford testimony are as follows:

a) Is it inherently incredible in the light of Ford's testimony concerning his own financial difficulties; his affidavits of improvidence, his alimony difficulties.

b) Ford's split with Powell and Powell's lieutenants —including the defendant.

c) The absence of records to substantiate Ford's story that the checks were payments to Lennon and not financial manipulations by Ford with a then trusted lieutenant to hide Ford's own cash. This must be borne in mind along with the fact that Ford, an accountant, could produce nothing to support his story.

d) Ford's burned currency story as compared with the testimony by the bank as to the bank's method of handling burned currency.

e) If Ford trusted the defendant, as he testified (1139g) he did, then why did Ford have to go to the banks with Lennon for the purpose of cashing the checks when a simple "OK to cash" would have been sufficient?"

* * * * *

CHARGE OF THE COURT

(1140) (DAWSON, J.)

The Court: Mr. Foreman, ladies and gentlemen of the jury:

We have now reached the point in this trial where you are about to enter upon your final function as jurors, which is one of the sacred duties of citizenship.

You have given careful attention to the evidence in this case during the trial, and I am certain that you will approach and conduct your final deliberations in that same fine spirit which you have so far displayed, and with fairness and impartiality reach a just verdict.

Charge of the Court

In our court system, the functions of the judge and the functions of the jury are clearly defined. As you are not lawyers, it is my duty to instruct you as to what the law is. It is your duty (1141) to accept the law as I state it to you and then to determine, from the facts, from the evidence which you have heard, whether the defendant has violated the law.

Just as I am the exclusive judge of the law, so you, the members of the Jury, are the exclusive judges of the facts. As the sole and exclusive judges of the facts, you, and you alone, determine the weight, the effect, the value of the evidence, and the credibility of the witnesses.

In this case you are called upon to act as judges of the facts in a criminal prosecution where the Government is one party and the defendant the other. Let me add, the fact that the Government is a party entitles it to no greater and no less consideration than any other party to a litigation. The rich, the poor, the powerful, the weak; persons of every race, color, creed and religion, all stand as equals before the bar of justice.

The issue in this case is one of fact. In determining that issue, you decide it on the evidence. No consideration of politics, no consideration of race, no consideration of religion has any part in your deliberations, and we would be false to our duties as American citizens if we allowed any (1142) such consideration to enter into the determination, one way or another, of the issues of fact in this case.

The case must be decided within the scope of the charges made against the defendant as contained in the indictment. I shall hereafter discuss in detail the indictment and the the essential elements of proof necessary to sustain a conviction under the six counts of the indictment which I will submit to you.

Charge of the Court

As I had previously indicated to you when you were impaneled as jurors, the indictment itself is not evidence. It merely describes the charges made against the defendant. It is not evidence. Let us, before going into the charges in the indictment, first consider the principles generally applicable in every criminal case.

The defendant has denied the charges in the indictment. Accordingly, the Government, having made the charges, has the burden of proving them, and proving them beyond a reasonable doubt. The burden of proof never shifts and remains with the Government during the entire trial and during your deliberations as jurors.

The defendant does not have to prove his innocence. He is presumed to be innocent, and this (1143) presumption is overcome only when you reach a conclusion from the evidence that his guilt has been established beyond a reasonable doubt.

You may ask yourself what is meant by a reasonable doubt. There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason. It does not mean a capricious or a silly doubt. It does not mean a doubt which might arise because a juror does not wish to perform an unpleasant duty. The phrase "reasonable doubt" means exactly what it says—a doubt based upon reason.

It is not necessary for the Government to prove the guilt of the defendant beyond any possible doubt. If that were the rule, few cases might reach a conclusion. The fact is that in this world of ours it is practically impossible to prove any controverted fact which, by its nature, is not susceptible of mathematical certainty beyond all possible doubt. In consequence, the law is that in a criminal case it is enough if it be proved that the defendant's guilt is established beyond a reasonable doubt.

Proof in a case such as this is not a matter of mathematical or absolute certainty. In (11-44) the nature of things, it cannot be. But to sustain a conviction, there must be such proof as satisfies your reason as intelligent persons, beyond any reasonable doubt, that the defendant is guilty of the charges contained in the indictment.

If you find no reasonable doubt of the defendant's guilt, then you must return a verdict of guilty. If you find a reasonable doubt as to the defendant's guilt, then you must return a verdict of not guilty.

The defendant has not taken the stand. Under our system of law, no defendant is required to take the stand in his own defense. He may sit at the counsel table and say nothing and offer no evidence at all in his own defense, and the burden still remains on the Government. The fact that a defendant does not take the stand to testify is not to be considered by you in your deliberations in determining the guilt or innocence of the defendant. In other words, the defendant is not called upon to prove his innocence under our system of law. The burden is always upon the Government to prove the defendant guilty, and to prove it beyond a reasonable doubt.

(1145) There is another thing you should keep in mind; and that is that you are determining the guilt or innocence of the defendant on a serious charge, and you must determine that from the evidence that you heard from the stand and the exhibits.

The case has been tried by two competent lawyers, but a trial is not a popularity contest between lawyers. It is not a question of whether you like one lawyer better than the other. It is a determination of the guilt or innocence of the defendant on the charges contained in the indictment.

Charge of the Court

There were two indictments in this case which have been consolidated for trial. As I have said, the indictment is not evidence. It merely states the charge made against the defendant, and the Government has the burden of proving the respective charges beyond a reasonable doubt.

You will have to return a verdict on each of the six counts of the indictment. These six counts of the indictment relate to the income taxes for six separate years, 1949 through 1954, inclusive. You will have a copy of the indictment in the jury room with you when you are considering your verdict.

Each count of the indictment alleges that (1146) the defendant did unlawfully, wilfully, and knowingly attempt to defeat and evade a large part of the income tax due and owing by him for a particular calendar year. Therefore, in each count of the indictment, the question is whether he "unlawfully, wilfully and knowingly attempt to defeat and evade" part of the income tax due by him to the United States for that particular year.

To a very large extent, our Government relies upon the taxpayer's own disclosure for the collection of income taxes and, indeed, for the payment of refunds, if the taxpayer claims a refund is due. Under our tax laws, we operate on an honor system and each taxpayer is initially his own tax assessor. Such a system can function successfully only if the taxpayers render true and honest accounts to the Government in connection with their income tax returns.

To insure effective operation of the taxing system, Congress has provided penalties for a wilful attempt to defeat and evade income taxes. A wilful attempt to evade income tax for one year is a separate offense from an attempt to evade a tax for another year. That is the

reason why there are six separate (1147) counts in this indictment and why you are to bring back a separate verdict on each count.

The first count of the indictment relates to the calendar year 1949. It alleges that the defendant attempted to evade part of the income tax owing for that calendar year by filing, on or about March 15th of the following year, a false and fraudulent income tax return wherein he stated that his net income for the calendar year 1949 was the sum of $3,091.25; in which he stated that he was entitled to exemptions for "Acy, Jr." and "William" as dependent sons; and that there was no tax due and owing on said returns, whereas, as the indictment says, as he then well knew, his net income was the sum of $4,691.25; that he was not entitled to claim the said "Acy, Jr." and "William" as exemptions in that they were not dependent sons; and that the amount of income tax due to the United States was $388.39.

Now, this first count of the indictment, therefore, alleges that the defendant unlawfully, wilfully, and knowingly attempted to evade part of his income taxes due for the year 1949 by doing two things:

(1) Listing two dependent sons who were (1148) not dependent sons; and

(2) Failing to include $1600 of income on his returns.

The Government, as you know, offered the testimony of Mr. Ford, who stated that he hired the defendant Lennon to assist him in the running of a tax service, and that he paid the defendant Lennon, in the year 1949, $1600 for such services rendered by him in connection with the tax service run by Mr. Ford in that year.

Charge of the Court

A check drawn by Mr. Ford and endorsed by the defendant Lennon and also by Mr. Ford was received in evidence. The income tax for that year is also in evidence. It shows that the defendant did not include in his income for that year any $1600 for work done for Mr. Ford in connection with the tax service. It also shows that the defendant claimed four exemptions, in addition to himself and his wife; to wit: two daughters, a son, Acy, Jr., and a son, William.

The return shows no tax due but indicates that a refund was due the taxpayer, and Exhibit 22 received in evidence shows that a refund was paid to the defendant on May 24, 1950, in the amount of (1149) $137.80.

Testimony given by Mr. Smith, of the Bureau of Internal Revenue, was that if the defendant was not entitled to claim Acy, Jr. and William as dependents and if he had received $1600 from Mr. Ford for services rendered to Mr. Ford, he would have been entitled to no refund, and, in fact, would have been indebted to the Government in the sum of $380.36 for income taxes with respect to that year.

We now turn to the second count of the indictment which relates to the income tax return for the year 1950, and which was filed, of course, in the following year.

The indictment alleges that the defendant in that year did unlawfully, wilfully, and knowingly attempt to defeat and evade a large part of the income tax owing by him by stating that his net income in that year was the sum of $3,586.20; that he was entitled to 4 exemptions for Acy, Jr. and William as dependent sons; and that there was no tax due and owing by him; whereas, the indictment alleges, he had a net income for that year of $5,286.20; that he was not entitled to claim Acy, Jr. and William as exemptions in that they were not dependent sons; (1150) and that the amount of income tax due to the United States for that year was $525.41.

We, therefore, have with respect to that return issues with reference to two items: the first item, of course, was the defendant's claiming of Acy, Jr. and William as dependent sons; the second is whether he reported his full income.

The Government offered on that the testimony of Mr. Ford that in that year he also paid the defendant $1600 for work rendered in connection with the tax service which was paid by a check, and that he also paid the defendant $100 in that year additional in cash.

The tax return which is in evidence does not indicate that any such amounts were included in the net income of the taxpayer, and it indicates that he did claim as dependents sons Acy, Jr. and William, in addition to his two daughters, his wife, and himself.

The tax return stated that no tax was due and that a refund was in fact due. Exhibit 22 received in evidence shows that a refund was paid to the defendant in the year 1951 in the sum of $224.60.

(1151) The testimony of Mr. Smith of the Bureau of Internal Revenue was that if the defendant was not entitled to claim Acy, Jr. and William as dependents, and if he had received income from Mr. Ford of $1700 in addition to that reported in his return, there would have been no refund owing to the defendant for that year, but that there would have been an additional tax for that year to be paid by the defendant of $502.20.

The third count of the indictment relates to the 1951 tax return which, of course, was filed in the following year. It alleges that the defendant unlawfully, wilfully and knowingly attempted to evade a large part of his income tax for the calendar year 1951 by filing a false return in which he stated that his net income for the year 1951 was $3,159.40; that he was entitled to exemptions for Acy, Jr. and William as dependent sons; and

that there was no tax due and owing by him; whereas, so the indictment alleges, his net income was the sum of $4,759.40; that he was not entitled to claim Acy, Jr. and William as exemptions in that they were not dependent sons; and that the amount of income tax due to the United States was $488.50.

(1152) Here, again, the Government contends that the defendant received from Mr. Ford $1600 in 1951 for work in connection with the tax service and that he did not report this income. The tax return is in evidence and shows no such income reported. It shows that the tax return claimed no tax due and that a refund was due to the defendant.

The evidence shows in Exhibit 22 that the defendant in 1952 received a refund in the sum of $321.87.

Mr. Smith of the Bureau of Internal Revenue testified that if the defendant was not entitled to claim Acy, Jr. and William as dependents in that year, and if in addition to the income reported in his income tax return he received an additional income of $1600 from Mr. Ford for services rendered by him to Mr. Ford, there would have been no refund due to the defendant, but there would have been a tax due to the Government of $481.32.

The fourth count of the indictment relates to the income tax return for the year 1952 and alleges that in the following year the defendant filed a return and unlawfully, wilfully, and knowingly attempted to evade a large part of the income tax owing by him (1153). by stating that the joint income of himself and his wife for that year was $2,657.63, and that they were entitled to exemptions for Acy, Jr. and William as dependent children, and that there was no tax due on the return.

The indictment charges that the defendant was not entitled to claim Acy, Jr. and William as dependent

children and that, in fact, the income of the defendant in that year was not the sum set forth in the return but was the sum of $4,157.63. This additional income, the Government charged, was $1500 which the Government claimed was received by the defendant as his share in connection with the sale of certain apartments in a co-operative housing project in Queens.

As I have already advised the jury, I have stricken out all testimony with reference to this item. The testimony was clear that the $3,000 which was paid in connection with the sale of these apartments was paid by a Mr. Kent with the understanding that it was to go to a corporation known as the Tenants Protective Association; that it did go into the bank account of the Tenants Protective Association and thereafter, in some way, was paid out. How (1154) it was paid out and why it was paid may, in view of the uncertain testimony, be somewhat of a mystery, but there was no testimony that it was paid out to the defendant Lennon, or was paid out for his benefit or on his order alone.

Whether the Tenants Protective Association properly handled these funds and whether it should have filed a tax return with reference to the funds is not before this Court or jury. We are not here concerned with the activities of the Tenants Protective Association on any evidence which has been presented in this trial. There was no evidence that the funds were paid to the defendant and, therefore, I have eliminated from consideration by the jury any question of a failure to include in the 1952 return the sum of $1500 which is alleged with reference for that year.

With reference to the 1952 return, the only question is whether the defendant wilfully and knowingly attempted to evade income taxes by claiming as dependent sons Acy, Jr. and William.

Now, let us recapitulate the issues with reference to the first four counts of the indictment—those which relate to the tax returns for 1949, 1950; (1155) 1951 and 1952. Those were the years in which the defendant's returns claimed as dependents sons Acy, Jr. and William, in addition to his two daughters, himself and his wife.

You have heard the evidence with reference to the defendant's family. You have heard the testimony of his daughter that she had never known any brothers and that no brothers had lived with them. You have heard the testimony of Mr. Ford that he never heard of any sons of the defendant. The daughter testified that she had heard rumors that her father might have had illegitimate children, but no testimony of any illegitimate children was given.

As we all know, the income tax law allows, and it allowed in the years in question, an exemption of $600 for any dependent child who received half of his or her income or support from the parent. In other words, for each such dependent child, $600 of the taxpayer's income was tax free and not taxable.

If a taxpayer claims an exemption for a dependent when, in fact, he does not have a dependent and claims that knowingly, wilfully, and intentionally with the intent to evade the payment of income taxes, he is escaping part of the tax liability which he (1166) otherwise would have to pay. You will have that issue with reference to the 1949, 1950, 1951 and 1952 returns.

No exemption was claimed for Acy, Jr. or William in the tax returns which were filed for the years 1953 and 1954, which are the fifth and sixth counts of the indictment.

In addition, in the tax returns for the years, 1949, 1950 and 1951, the Government contends that the taxpayer re-

ceived income in each year from Mr. Ford for services performed in connection with the tax service run by Mr. Ford, and that he failed to include that income on his income tax return and thereby avoided payment of tax on those amounts.

Here you will have the question as to whether the taxpayer did receive those funds from Mr. Ford, whether he received them for services rendered to Mr. Ford, and whether he failed to report them wilfully and knowingly with an attempt to evade payment of income taxes owing by him.

On the issue as to whether the defendant omitted to report income alleged to have been received by him from Mr. Ford for services in assisting Mr. Ford in the tax service in the years 1949 to (1157) 1951, you will have a question of weighing the evidence primarily of Mr. Ford and the exhibits which have been introduced in evidence to determine whether in fact you believe that it has been established, beyond a reasonable doubt, that the defendant did receive those payments from Mr. Ford in those years for services, and that he failed to report the income in his income tax return with the wilful intent of evading an income tax owing on it.

There seems to be no dispute that Mr. Lennon, in the years 1949, 1950, and 1951, was working on the tax service with Mr. Ford, that he rendered services in connection with it, and that he did not on his tax returns any income from such services. Mr. Ford has testified that he did pay him, and certain checks have been received in evidence.

As far as the tax returns of the defendant would indicate, he received no compensation from Mr. Ford in those years.

You may take all of this evidence in account, together with all other evidence in the case, in determining whether

to accept Mr. Ford's testimony and whether the defendant failed to report income on his income tax return with a wilful intent of evading an (1158) income tax.

With reference to the question of dependents, you have the issue in those years as to whether the defendant in fact reported dependents and took exemptions by reason of them when he knew that he had no such dependents and was not enlitled to those exemptions, and that he did that with the wilful intent of evading payment of income taxes.

We now come to Counts 5 and 6 of the indictment.

The fifth count of the indictment relates to the tax for the calendar year 1953. The tax return was filed in 1954. No claim was made in that year for Acy, Jr. or William as dependent children. The indictment does allege that in that year the tax return filed on behalf of the defendant and his wife stated that their net income was $3,772.32 and that the amount of tax due and owing thereon was $304.66 whereas, alleges the indictment, he well knew that their joint net income for the year was the sum of $7,357.82 upon which there was owing income taxes of $1,123.62.

The additional income which the Government says should have been included in the return in that (1159) year comprised the following items:

(1) Commissions received from the Variety Furniture Company on sales of furniture, $630. The Government introduced evidence that in that year the defendant received from this furniture company commissions on sales of furniture of $630. The defendant contends that this amount was included by him in his income tax return for the following year and that he failed to include it in the 1953 return because of his belief that it was properly

reportable in the 1954 return. If he honestly made a mistake for the year in which the income was to be reported, he could not be guilty of a wilful violation of the law with reference to that item.

(2) Fees received by the defendant from purchasers of the apartments of the cooperative housing project: $390.

Testimony has been given by various persons who bought apartments at this project that they gave various sums of money to the defendant who was one of the managing agents of the project at that time, which sums aggregated $390. The circumstances surrounding the payment of these sums has been told you by the witnesses.

(1160) If you conclude that such payments were in fact received, then you must further consider the question as to whether they constituted gifts to the defendant or whether they were earned income of the defendant. This is because of the fact that if they were gifts, there was no obligation that the defendant report them on his income tax return.

On the other hand, if you find that these payments constituted earned income of the defendant, then the defendant had an obligation to report them on his income tax return.

Whether these sums alleged to have been paid to the defendant were gifts, or whether they were paid to him for services, is a question of fact which will have to be determined by the jury, taking into account all of the testimony in the case.

The mere fact that the payments were voluntary does not necessarily establish that they were gifts. The question is whether they were made for services rendered or to be rendered by the defendant. If the payments were

made to the defendant for this purpose and received by him for this purpose, then such payments would constitute earned income to him, no matter whether they were described colloquially as (1161) gifts or gratuities, but if they were given to him not because of services rendered by him, or services to be rendered by him, then they would not be taxable income to the defendant.

In determining whether these items were earned income or gifts, you should take into account the relationship of the parties, the conversations of the parties, as testified to by the witnesses, and all of the circumstances surrounding the transactions, and determine as a fact whether these items were gifts or whether they were compensation for services rendered or to be rendered by the defendant. If they were the latter, they should be included as earned income. If they were truly gifts, there was no necessity for the defendant to report them on his income tax return.

Of course, if the payments were made as part of the payment for the stock of the corporation, they would not be income of the defendant.

The third items in this series has to do with fees for services rendered in preparing income tax returns.

The Government contends that in the year 1953, the defendant received $2,375 from various per- (1162) sons for the preparation of their income tax returns.

You will recall that certain of the witnesses testified as to amounts paid to the defendant for the preparation of income tax returns. After certain witnesses were called, the defendant stipulated that if all of the witnesses subpoenaed by the Government were called, they would testify that they had paid certain sums for the preparation of their income tax returns to the defendant, and that their testimony would be that they had paid

to the defendant $2,375 in the calendar year 1953 and $2,366.50 in the calendar year 1954.

The income tax returns have been received in evidence. They showed that for the year 1953 no income is specifically stated as coming to the defendant from the tax service. There is an item of $750 designated as commissions.

The defendant contends that he had certain expenses in connection with operating the tax service and that the sum of $750 was the net income which he received from that tax service.

The Government has established what the gross income of the defendant was from that service. There has been no evidence as to what the net income (1163) of the defendant was from this service after the payment of expenses.

The law provides that all kinds of income, with certain exceptions not here relevant, are subject to income tax. That means that the income must be included in your return even though it may be offset by expenses and other deductions. However, when a taxpayer has a business or profession, he is taxed on its profits, not on its total receipts. Therefore, in each year a separate schedule—I believe it was customarily Schedule C—was provided to enable the taxpayer to subtract his costs of doing business from his receipts. The costs which would be deducted are the ordinary and necessary costs of doing business, such as salaries, rent, supplies, and other expenses.

The fifth count of the indictment relates to the return for the calendar year 1953.

This shows that the defendant did include a Schedule C listing his total receipts from the luncheonette and the expenses in connection with it, and showing his profit

or loss from the operation of that business. It shows that he did not include any schedule showing the total receipts from the tax business or the expenses of operating the tax business.

(1164) The Government contends that it has established that he received from the tax service $2,375 in that year; and that to report $750 as his income from the tax service, under all the circumstances, was a misstatement of income, done with the intent to evade the payment of the tax.

The defendant, on the other hand, contends that there were certain expenses incident to the tax service, such as salaries, et cetera, and that putting down the sum of $750 on his 1953 return was not a wilful misstatement of his income from that service.

We come next to the sixth and last count of the indictment, which relates to the calendar year 1954.

It alleges that the defendant unlawfully, wilfully, and knowingly attempted to evade part of the taxes owing by him by stating that the income of himself and his wife was $4,986.40, whereas their income for that year was $6,247.90.

Here, again, the Government contends that the defendant failed to report his full income from the operation of the tax service. The tax return filed that year for the taxpayer shows that he did include a schedule in which he listed as "Commissions, (1165) income tax returns" $1,105 and in which he listed as expenses under that the sum of $603.

The Government contends that the evidence adduced, together with the concession of the defendant, shows that instead of receiving $1,105 for preparation of income tax returns in that year, the defendant actually received $2,366.50; and that if you deduct the expenses taken by

him on his return of $603 for the operation of that tax service, it would show that he received as net income from that tax service in that year $1,763.50 as net income instead of $502 of net income shown on his return from that tax service.

The defendant again contends that he had certain expenses in connection with the operation of the tax service in that year. However, the defendant listed on his return his expenses but, says the Government, he did not list his full income from the service, and, therefore, he wilfully misstated his income with the intent of evading the tax due thereon. The tax is due on the net income after expenses. But if the taxpayer properly listed his expenses in the 1954 return but failed to report the total receipts made by him in that year from that service, then he has failed to show what his actual net income was in that (1166) year from the operation of the tax service.

Those are the six counts of the indictment.

Now, of course, if the taxpayer made a mistake in filling out his tax return, this would not be a wilful evasion of taxes and, so, in order to find the defendant guilty on Counts 5 and 6 of the indictment, the jury must be prepared to find that, beyond a reasonable doubt, the defendant understated his net income from the tax service after all expenses incident thereto, with the intent to evade the payment of income taxes.

The misstatement of income in the income tax return would not alone be sufficient for a conviction. The mere failure to fill out a schedule, or to give an address for dependents is not alone sufficient for a conviction. For the jury to convict, it must find (1) that the taxpayer misstated his taxable income; and (2) that he did it intentionally and wilfully and with an intent to evade the payment of taxes which he knew to be due.

Charge of the Court

I have reviewed certain of the evidence in this case so as to be of some assistance in pointing up the issues involved. I have not attempted to review all of the evidence, but you must, of course, consider (1167) all of the evidence in reaching your verdict in this case. If I have made any misstatement of the evidence which does not accord with your recollection of it, you must disregard such statement by me. So also statements of counsel are not evidence. It is your recollection of the evidence and not any statement, or statements of counsel, which must govern you in the determination of the issues in this case.

Now, what is the statute which the defendant is alleged to have violated? The Federal Code provides in effect that:

> * * * any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony * * *.

In order to establish a case against the defendant under this statute, the Government has to prove two things against the defendant with respect to each count:

(1) That a tax on income was due and owing by the taxpayer; and

(2) That the defendant wilfully and knowingly attempted to evade payment of it.

(1168) The crime is complete when the taxpayer wilfully and knowingly files a false and fraudulent return with an attempt to defeat or evade any part of the tax due the United States. It is not necessary for the Gov-

ernment to prove an evasion of the entire amount alleged in the indictment; the Government's proof is sufficient if it shows beyond a reasonable doubt that any substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer.

The Internal Revenue Code requires that the taxpayer report all of his taxable income in a given year in his tax return. However, the fact that a taxpayer fails to list all of his income in his tax return, or has listed as dependents persons who are not dependents does not necessarily mean that a defendant is automatically guilty of wilfully attempting to evade the income tax laws.

In addition to establishing an understatement of income, the Government must establish an element of wilfulness—that is, a deliberate intent to defraud the Government by depriving it of the income tax properly due.

You will see that the indictment charges (1169) that the defendant "wilfully and knowingly" attempted to evade the taxes payable by him. The term "wilful" can be defined as an intentional knowing or voluntary act as distinguished from an accidental act. A wilful act is one which is done with a particular purpose. When specifically related to income tax evasion "wilful" means that the defendant must have acted in the way he did with the intent and purpose of keeping from the Government the tax imposed by the income tax laws.

In determining whether the defendant acted wilfully, it is not sufficient if all that were shown is that he is stubborn, stupid, careless or negligent, or even grossly negligent. A defendant is not wilfully evading a tax if he is merely careless about making out his or her returns. He is not wilfully evading if all that can be shown is that he has made an error of law, or that he made an error of fact, and did it without an intentional purpose of keeping from the Government a tax owing to them.

I would point out that the civil liability for taxes is quite different from the imposition of criminal penalties. A person who files an incorrect return may be assessed the additional amount and this (1170) amount may be collected by the Government with interest and penalties. That is the recovery of a tax in a civil proceeding.

To impose a criminal penalty, however, it is necessary that the Government establish what might be called a criminal intent, that is, that the acts which were done by the taxpayer were done knowingly and with the wilful intent that by doing those acts, he would deprive the Government of an amount of tax which he himself knew was owing to the Government; and that he did this deliberately with the knowledge that the acts which he was doing were wrong and were designed to escape the payment of taxes which he knew were owing to the Government.

You will, therefore, with respect to each count of the indictment return a verdict of guilty or not guilty. If you find that the Government has established, beyond a reasonable doubt, that the defendant, with respect to a particular year, had knowingly and wilfully understated his income, or had knowingly and wilfully claimed as dependents persons who were not his dependents, and if you conclude that the Government has established, beyond a reasonable doubt, that the defendant did this knowingly and (1171) wilfully with an attempt to evade and defeat part of the income tax owing by him, then you may find the defendant guilty on that count of the indictment to which those facts relate.

If, on the other hand, you do not find that the Government has established beyond a reasonable doubt that the defendant knowingly and wilfully understated his income, or knowingly and wilfully took as dependents persons

who were not his dependents, or that the acts done by the defendant, and the returns filed by him, were not done by him knowingly and wilfully with an attempt to evade any income tax owing by him, then on that particular count of the indictment, you should acquit the defendant.

In determining the question of intent, you may consider all of the evidence in the case to determine whether it adds up to a pattern of wilful intent to evade the tax laws. You may also consider the proper inferences that can be drawn from the evidence.

It is obviously impossible to ascertain or prove directly what were the operations of a person's mind. You cannot look into a person's mind and see what his intentions were. But a careful and intelligent consideration of the facts and circumstances shown (1172) by the evidence in any given case enables us to infer with a reasonable degree of accuracy what another's intentions were in doing or in not doing certain things.

We are in our affairs of life continuously called upon to decide from actions of others what their intentions or purposes were. And experience has taught us that frequently actions speak more clearly than spoken or written words. The existence of an intent to commit a crime other than income tax evasion is not the intent necessary to convict the defendant here. A specific intent to evade the income tax laws must be shown.

What we are really trying to determine here is what are the facts:

Did the defendant understate his income?

Did the defendant claim as dependents persons who were not his dependents?

Did the defendant, if he did those acts—and if you find that he did them, beyond a reasonable doubt—do them

with the wilful intent of evading income taxes owing by him?

Both the facts and the intent must be proved beyond a reasonable doubt in order to justify a conviction.

(1173) Now, out of all of the evidence in the case, how do you determine the truth? When you search for the truth, you use your plain everyday common sense. You have seen the witnesses on the stand and observed their manner of giving their testimony. How did the witness impress you? Was he frank? Did his version appear to be straightforward? Did he try to hide some of the facts? Was the witness interested in the outcome of the case?

What degree of credit you should give to a witness's testimony should be determined by his conduct, manner of testifying, and his relation to the controversy.

The facts that some of the witnesses for the Government are Government agents does not entitle their testimony to any greater weight or any less weight than that of any other witness. You will judge their testimony in the same way that you would judge the testimony of any other witness. The credibility of any witness is for you and for you alone to determine.

If you find that any witness has wilfully testified falsely to any material fact, you may reject his entire testimony or accept only that part (1174) of it which commends itself to your belief. What you accept or reject as truthful and believable is up to you.

I have sought to avoid any comment which might suggest my personal views as to the guilt or innocence of the defendant or the conclusions to be drawn by you from the testimony. I have pointed up the issues, and you are to decide the issues of fact. You are not to assume that I have any views as to the guilt or innocence of the defendant. The determination of that question is your sole and exclusive responsibility.

If in the course of these instructions I made any reference to any testimony which does not accord with your recollection, you are to disregard that assertion by me. The actions of the Court during the trial in ruling upon motions or in ruling upon objections or overruling objections, or in sustaining objections, are not to be taken by you as any indication of the guilt or innocence of the defendant. Those were matters of procedure and law with which the jury has no concern. You have the determination of the issues of fact.

You are instructed that the question of (1175) possible punishment of the defendant in the event of conviction is no concern of the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence in the event of conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of such evidence.

If you do not conclude, beyond a reasonable doubt, that the defendant is guilty on the charges contained in the indictment, then with reference to any such charge you should not hesitate to acquit the defendant. If you do conclude that the defendant has been proved guilty, beyond a reasonable doubt, of the charges contained in the several counts of the indictment, then, with reference to those counts on which you so find, you should not hesitate to convict the defendant, as a warning to others that a crime of this character cannot be committed with impunity.

There are twelve men and women on this jury. Any verdict must be the unanimous verdict of all. In the Federal Court, a 9 to 3 or a 10 to 2 verdict is not a good verdict. Therefore, the verdict must be unanimous.

Exceptions to Charge

(1176) I would point out, however, that no one should enter upon the deliberations in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right. Discussion, deliberation and consideration of the views of fellow jurors is part of our democratic process.

However, you are not to do violence to your own well-founded opinion. You are entitled to that opinion after discussion and deliberation. In other words, each one of you must decide the case for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors.

This case is an important one to the Government; it is an important one to the defendant. I will submit it to you with every confidence that you will fully measure up to the oath which you took as members of the jury to fairly and impartially and without fear or favor decide the issues submitted to you.

Are there any exceptions to the charge?

Mr. Bolan: None by the Government.

The Court: Any exceptions to the charge, Mr. Feldman?

(1177) Mr. Feldman: This is not in the nature of an exception, your Honor, but in discussing the 1950 situation you mentioned that the second payment of $100 was a cash payment, and I think we can all agree that it was not, that there was a check involved.

The Court: I am glad you corrected my misstatement, sir. That shows how I forget.

Mr. Feldman: And that check was deposited in the stationery or candy store account.

The Court: That is correct.

No exceptions to the charge?

Mr. Feldman: As such, no.

The Court: Then I am glad that you corrected me.

You may swear the marshals.

Mr. Bolan: There are two alternates, your Honor.

Mr. Feldman: Your Honor, are you going to take up the requests separately?

The Court: Well, I have passed upon all the requests, having denied some of the requests in the form submitted. I have considered all the requests submitted by both sides, and I think I have incorporated them to the extent that they were proper in (1178) my charge.

Mr. Feldman: Then I misunderstood the Court, and I mean no interruption to the orderly procedure, but I have exceptions to the charge, but I thought that you asked whether there were any additional requests.

The Court: Have you any separate requests to charge?

Mr. Feldman: Yes, sir.

The Court: I have already considered those that you have submitted, and we will not go over those as some of them have been incorporated in my charge.

Mr. Feldman: Oh, yes.

The Court: And some in different language.

Mr. Feldman: I am not going to repeat those.

The Court: Have you any further requests to charge?

Mr. Feldman: Yes, your Honor, I do, sir, and that is with reference to this question of dependents. I respectfully request the Court to instruct the jury that for the purposes of the case and as a matter of law an illegitimate child and a legitimate child are the same in the eyes of the law.

The Court: I will so instruct the jury, that (1179) an illegitimate child who is supported—

Mr. Feldman: Yes—oh, I mean all the other requirements.

The Court: —by his parents—

Mr. Feldman: Yes.

The Court: —is the basis of an exemption just as a legitimate child.

That raises the question as to whether there is such a child and where it was supported.

Mr. Feldman: And in discussing the 1953 and 1954 returns, your Honor, in stating the proof of deductions, the Court made no mention whatever of the testimony in this case as to the payments received for work done in the defendant's tax service by Noel.

The Court: The jury will certainly consider that testimony as to the payments received by that witness and the other people who worked there.

Mr. Feldman: And would the Court be good enough to instruct the jury that the verdict in this case has nothing whatever to do with the right of the Government to collect any taxes that may be due?

The Court: That is right. A civil liability is quite different from a criminal liability, as I pointed out.

(1189) In the civil liability, the Government just has to prove that the amount is owing and collect it; in a criminal liability involving a criminal penalty, the Government has also to prove the wilfulness which I have defined in my charge.

Mr. Feldman: And I respectfully request the Court to charge the jury that generally the Government could determine costs of the defendant for the preparation of the returns.

The Court: What is that? I do not quite understand it.

Mr. Feldman: I will go over it slowly, as I was reading from my notes made during the course of the Court's charge.

The Court: Yes.

Exceptions to Charge

Mr. Feldman: I respectfully request the Court to charge the jury that generally the Government could determine the costs to the defendant for the preparation of the returns which he handled in his tax service, and all the other expenses of running the tax service business independently of the defendant, or independent of his help, and if it had failed to make a reasonable attempt to make such an investigation as to his costs and expenses then that is an element for (1181) the jury to consider, and if they find the Government did not check up its notes on that point, that the jury must bring in a verdict of not guilty in favor of the defendant.

The Court: I decline to make any such charge as that. I think my charge sufficiently covered all of the elements which the jury should take into account.

Mr. Feldman: I respectfully except, your Honor.

I have no further requests.

Mr. Bolan: One suggestion, if I may, your Honor, and that is if this is the appropriate time to dismiss the alternates?

The Court: I will first swear the marshals; or have the marshals sworn.

Mr. Bolan: I see.

The Court: And send the jury out under their escort and then I will discharge the alternates afterwards. That is due to my extra precaution in having the alternates stay until the jury goes out and commence their deliberations, as I sometimes wonder whether hearing a long charge from the judge may create some heart attack on the part of some juror, and I do not (1182) want to take any chances.

(Marshals sworn.)

The Court: Will you please give to the marshal the exhibits which have been received in evidence and a copy of the indictment?

Exceptions to Charge

Mr. Feldman: Your Honor, what disposition is made usually by the Court with regard to the bill of particulars?

The Court: I happen to have it here. Do you want it sent in to the jury?

Mr. Feldman: I think it would be a good idea.

The Court: Any objection, Mr. Bolan?

Mr. Bolan: No, your Honor, I have no objection. I will have to get a copy.

The Court: I have a carbon copy of the bill of particulars. I don't know who has the original.

Mr. Bolan: It may be in the Government's file, your Honor, and I will check.

The Court: All right.

Here is a copy of the consolidated indictment, and I may say this carbon copy is the bill of particulars given by the Government to the defendant, with respect to which years and pertaining to the items which they said were omitted from the returns. If (1183) there is no objection, I will send that in to the jury. It may make it easier for one to understand the indictment.

All right, the jury will be escorted under the services of the marshals. The two alternates will please stay here.

I may say that I will be here in the court if any question comes up, in which event you will please just report to the marshal.

(At this point, 11:35 a. m., the jury retired from the courtroom and commenced their deliberations.)

The Court: At this point, I want to thank you two ladies for serving as alternate jurors. I know how you feel, just exactly the way that the football player feels

when he sits on the bench all throughout the season and never gets a chance to get in the big game, but nevertheless you performed a real service by being here, and if you want to step outside to the robing room, I would like to meet each one of you personally and thank each one of you personally for your presence.

The Court will take a recess.

(Short recess.)

(1183a) (The jury was escorted to lunch at 1:00 p.m., and returned to 2:00 p.m. to resume their deliberations.)

(The following proceedings took place 2:35 p.m., when the jury returned to the courtroom:)

The Court: I have received a message from the jury that says the following:

"Is the jury to report a single verdict for an entire count or a separate verdict to each part of each count?"

That is the first question. The jury will return a verdict on the count itself, guilty or innocent of the count.

Now, then, the next question:

"If the first alternative is true"—as I said it is—"does the jury understand that a unanimous verdict of guilty to any more or more parts of any particular count will be reported to the Court as a verdict of guilty to the entire count?"

That, of course, involves the question that in some of the counts there were various items which were said to have been understated or not properly reported with a wilful intent to evade the taxes.

As I said in my charge, and I repeat, and (1183b) this applies on any count:

"It is not necessary for the Government to prove an evasion of the entire amount alleged in the indictment; the Government's proof is sufficient if it shows, beyond a reasonable doubt, that any substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer."

In other words, if in any one of those counts the jury reaches the conclusion that the Government has established beyond a reasonable doubt that any substantial portion of the tax liability referred to in that count has been wilfully and knowingly evaded by the taxpayer, then on that count the jury may find a verdict of guilty.

It is not necessary to decide on each of the items referred to in the bill of particulars; it is only necessary to decide whether or not on the particular count which relates to a particular year, the Government has proved beyond a reasonable doubt that a substantial portion of the defendant's tax liability had been wilfully and knowingly evaded by the taxpayer.

Are there any exceptions to the charge?

Mr. Feldman: There are, your Honor.

It is my understanding, and I respectfully (1183c) request the Court to instruct the jury that with regard to each item in each count the Government has the burden of proof as to each item.

The Court: That is correct; I so charge.

Mr. Feldman: And in addition to that, your Honor, it is important, I believe, for the jury to understand that in taking into consideration the issue of wilfullness, that issue is affected by the amount of the tax involved, and that the amount of the alleged deficiency or alleged defi-

ciency in tax is an item to be taken into consideration on the issue of wilfullness.

The Court: They can take it into account on the question of wilfullness—

Mr. Feldman: In other words, if a small amount—

The Court: —but if the Government alleges that in a particular year the defendant failed to report X dollars and there is Item Y dollars in this item and Z dollars in this item, and the Government proves beyond a reasonable doubt that the defendant failed to report the X dollars with the intent to evade taxes, then the fact that the Government has not established that he failed to report Y and Z dollars does not require a (1184) verdict of innocence.

Mr. Feldman: But to use a ridiculous example, your Honor, if Item X was $5, Y a hundred and Z a thousand, the jury could take into consideration the fact that the $5 item is no indication of wilfullness, that amount.

The Court: I would say that they could take that into account, that it is no indication of wilfulness, but they could take all of it into account in deciding whether there was proof of wilfullness. You are right in that.

Does that answer the question of the jury?

The Foreman: I think that satisfies us.

The Court: Thank you.

The jury may then resume its deliberations.

(At 2:45 p.m., the jury thereupon left the courtroom and resumed their deliberations.)

Discussion

(The following proceedings took place in the robing room at 2:45 p.m.:)

The Court: To make the record complete, I will direct that there be filed with the record of this case the Government's requests to charge constituting twenty-five requests, the defendant's requests to charge constituting requests I through V, which have (1185) certain subdivisions in each of those parts.

As previously stated, I considered all of the requests to charge and to the extent that I considered any of them proper, I incorporated the substance of them in my charge.

I, therefore, have denied the requests of both the Government and the defendant in the form stated in their requests, and and an exception is granted.

Mr. Feldman: Your Honor, off the record?

The Court: Yes, off the record.

(Further discussion off the record.)

(At 6:45 p.m., the jury was escorted to dinner by the marshals and returned to 8:00 p.m. to the court house to resume their deliberations.)

(At 11:05 p.m., the jury returned to the courtroom and the following proceedings took place:)

The Court: Ladies and gentlemen:

I don't like to interrupt your deliberations. You have been at it a long time and I know that you are considering the matter very seriously.

The only reason I called you back is this:

If it looks as though your deliberations are going to take considerably longer, maybe you will want (1186) to

have a night's sleep, and the United States Marshal has to make the arrangements and informs me that if we are to make hotel reservations for the jury, we should make them now, otherwise it may be impossible to make the necessary reservations.

Now, that is no indication necessarily that we should do that. I simply say that so that the jury may understand that if we continue for a number of other hours, we can't get hotel reservations, and there is nothing that we can do about it.

If there is anything that the Court can do, any further charges to you, further instructions, or if there is any testimony you want read, or anything like that, of course, that can be done, but all I am indicating is that if we are to get accommodations for the jury, hotels being what they are, why, I don't want to reach the situation at midnight where somebody says, "Let us be put up for the night," and then have the Marshal tell me that we can't do it.

So, the Marshal sitting over there (indicating), tells me that he has to know now or pretty soon what is wanted.

Now, with that I am going to suggest that the jury return again to their room and try to reach a de- (1187) termination on what they want.

If you want to continue with your deliberations or quit now, all right. I mean there is no reason why you should not go to the hotel for the night and resume tomorrow. I will be here as long as you want. I have been in the court until three o'clock in the morning sometimes, waiting for a jury to return a verdict, but I know sometimes the people feel an imposition on them not to get a night's sleep.

That is the reason, and we are thinking of your comfort at this time. Therefore, I suggest that you return

to the jury room and decide what you want to do, whether you want to continue your deliberations or you would like to try to have me get hotel reservations for you.

Now, if there are any questions you want to submit to the Court, any problems or instructions, write them out and give them to the Marshal, and I will be glad to give you such instructions as I can.

Deliberation and discussion is the great thing in our jury system with an attempt to reach a verdict. Of course, if you do not reach a verdict it simply means that the case has to be retried again with the (1188) expense and delay to all, so if the jury will retire again and let me know what you want to do.

Mr. Feldman: I am sure your Honor did not mean to indicate that any juror should reach a verdict just for the purpose of saving expense and avoiding delay.

The Court: No, deliberation and discussion, and be careful in reaching a verdict, which should be the honest verdict of the jurors, as that is always desirable.

All right, if the jurors will now retire, and if you have any messages, just give them to the Marshal.

The Foreman: May I address the Court?

The Court: Surely.

The Foreman: Is it possible to get a copy of the testimony?

The Court: It can be read to you but it can't be given to you as such. Under the rules, it can be reread to you here in the courtroom, and if you want any testimony or any witness's testimony reread, or anything like that, tell us what you want and it will be reread to you right here.

The Foreman: I believe the jury would like (1189) to have reread Mr. Noel's testimony.

Discussion

The Court: Noel's testimony, is that correct?

The Foreman: Yes, sir.

The Court: Then we will have that testimony reread.

Mr. Bolan: Could I also make a request with respect to the request that the jurors made when they came in at three o'clock, and that is that I would request that the charge be made to the jury that it is not——

The Court: First of all, I am going to have the testimony reread that the jurors want.

Now, Fred, will you get the testimony which is out in the robing room, I think.

Now, we know what overtime is. This is the third night that I have been here, not on this case but one night on the charge, and another night on other things.

However, I might say that while you have been working, I also have been working on this other case which starts next week and which involves millions of dollars, to try to get a little ahead of time.

Now, Mr. Reporter, if you will please read Mr. Noel's testimony.

(1190) (Testimony of the witness Noel read to the jury.)

The Court: All right. Is there anything else you desire at this time?

(No response.)

The Court: All right, then, you can please let me know if you, after you retire to your jury room if you want me to try to get hotel reservations for you, but if you do not, that will be perfectly all right, too.

Also, if you have any other requests at any time, just write them out and give them to the Marshal and we will be here.

The Foreman: Thank you very much.

Discussion

The Court: Ladies and gentlemen, thank you for the great attention you are all giving to this matter. You are performing a real patriotic service.

(At 11:35 p.m., the jury retired to resume deliberations, and at 12:50 p.m., the following proceedings took place in open court:)

The Court: At the request of the jury, I have made hotel reservations for the jury, and I understand that a Carey car will be here in about twenty minutes to take the jury to the hotel for the night, (1191) and since it is going to be rather late before you get to bed, I am ready to reconvene any time tomorrow morning you say. I leave it to the jury. What do you want to do about it, eleven o'clock, nine o'clock, eight o'clock?

The Foreman: It is the verdict of the jury that we reconvene at ten o'clock.

The Court: The verdict of the jury is ten o'clock?

The Foreman: Yes, sir.

The Court: I am very glad we got a verdict out of the jury. We will then reconvene at ten o'clock tomorrow morning. I hope you have as pleasant a night as possible.

And, of course, if you ladies and gentlemen reach a verdict on any of the counts of the indictment, why, you can report the verdict to the Court as soon as you reach it. I think you probably are not going to reach a verdict tonight and you want to go to the hotel, so all I can say is pleasant dreams.

The Foreman: The jury would like to extend an apology for keeping everybody here up so late.

The Court: You are performing the greatest public service and for this attention you should be (1191a) proud, and in the further realization that you are taking this seriously, and it is a wonderful thing.

(Adjourned to October 19, 1956, at 10:00 a.m.)

Verdict

(1192) New York, October 19, 1956,
10:00 o'clock a.m.

(At 12:50 p.m., the jury returned to the courtroom and the following proceedings took place:)

The Court: Now, ladies and gentlemen, I have received a message from the jury which reads as follows:

"The jury has reached a unanimous verdict on each of the five counts. The jury cannot reach a unanimous decision on the sixth count."

The jury has now been considering this case for over twenty-five hours, and I think they have devoted a lot of conscientious attention to it, and I will take the verdict on the first five counts and will enter a disagreement on the sixth count.

You may take the verdict, Mr. Clerk.

The Clerk: Members of the jury, please answer as your names are called.

(Roll of jurors called.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: On the first five counts, we have, (1193) sir.

The Clerk: How do you find?

The Foreman: On the first count, the jury finds the defendant guilty as charged; on the second count, the jury finds the defendant guilty as charged; on the third count, the jury finds the defendant guilty as charged; on the fourth count the jury finds the defendant guilty as charged; on the fifth count, the jury finds the defendant not guilty.

The Court: And on the sixth count the jury is unable to agree?

The Foreman: Yes.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded:

You say you find the defendant Acy Lennon on Count 1 guilty, on Count 2 guilty, on Count 3 guilty, on Count 4 guilty, on Count 5 not guilty, and on the sixth count unable to agree on a verdict?

The Jurors: Yes.

The Clerk: And so say you all?

The Jurors: Yes.

The Court: Do you wish the jury polled?

Mr. Feldman: I do, your Honor, on each count and on each item of the counts.

(1194). The Court: There are no items in the counts to be reported on.

I will ask the jury to be polled on their verdict as it has been given; that is, if they find the defendant guilty on Counts 1, 2, 3, and 4, of the indictment, and not guilty on Count 5 of the indictment.

You may poll the jury, Mr. Clerk, to ascertain if that is their verdict.

Mr. Feldman: May I respectfully except and point out on the record and to the Court that there are two items in each of the first three counts, and the fourth, your Honor, and that——

The Court: As you know, defendants are not found guilty or innocent on items; they are found guilty on counts of an indictment.

Mr. Feldman: But the items, if your Honor please, are not interrelated.

The Court: That may be, but the verdict is guilty or not guilty on the count. I have already said what the.

finding of the jury is and as given by the foreman, guilty on Counts 1, 2, 3, and 4, and not guilty on Count 5.

You may poll the jury and ascertain if that is their verdict.

(1195) Mr. Feldman: I respectfully except.

(Each one of jurors indiyidually polled and each juror confirmed the above as his or her verdict.)

The Court: Any motions?

Mr. Feldman: There are, your Honor.

The Court: Yes?

Mr. Feldman: Your Honor, I move to set aside the verdict of the jury on the first four counts, on all of the grounds previously stated, and in addition—incidentally, when I say on all of the grounds previously stated, I assume the Court is aware of the motions that were made at the close of the Government's case, and that by failing to enumerate them I am not excluding any of them.

And, in addition, if your Honor please, I would at this time make an additional motion to set aside the jury's verdict as not based on the evidence, the Government not having established its burden of proof beyond a reasonable doubt.

The Court: Your motion is denied and your exception is noted.

Mr. Feldman: Now, at this time, if your Honor please, I should like to make an additional (1196) motion for a new trial, on the ground that in view of the minimum amount of tax involved in each of the years in question, that the length of deliberation of this jury, coupled with the suggestion by the Court of last night that a failure to agree would result in a new trial and at great expense to the Government.

The Court: I said at great expense to all parties.

Mr. Feldman: And indicated to the jury the necessity of reaching an agreement independent of the factors which were in the case; namely, the evidence and exhibits, and for these reasons, without waiving my rights for making a motion under the grounds I move for a new trial.

The Court: Your motion is denied and exception is noted.

I may say that this jury has conscientiously considered this case, and that at no time until I received this note have they ever indicated that they desired to be assisted, or that they were not conscientiously considering all of the evidence in the case. They have continued their deliberations for a long period of time at their own choice.

Any further motions?

(1197) Mr. Feldman: Not at this time, your Honor. There are other motions which I can make but which——

The Court: Any motions that are going to be made, you had better make now.

Mr. Feldman: Your Honor, I most respectfully point out to the Court, as has been done before, that we have in the first four counts a situation where we deal with a misdemeanor statute as well as with a felony statute, particularly 3616(a) as compared with 145(b) and under such circumstances, your Honor, I move that the verdict of the jury be set aside on the ground that it is impossible legally for the Court to determine, or for anyone, for that matter, to determine whether or not the first four counts —I believe that is correct—whether the first four counts should have been submitted to the jury at all for the reasons stated to the Court, and the Court will recall that I pointed out at a previous motion the disparity of the two items: namely, the dependency item as compared to

the unreported income item as being completely unrelated with the dependency count, being the 3616(a) count.

The Court: I do not understand that it is necessarily so.

Mr. Feldman: And the unreported income as (1198) well, being the 3616 count, in view of the fact that there was no evidence presented in this case of the concealment of any crime whatever, and which effectively outlaws the jury's verdict on those four counts.

The Court: You mean the statute of limitations has run on those counts?

Mr. Feldman: On the indictment, that is right.

The Court: I have already passed upon that application for you. I find that the statute of limitations has not run and I have so ruled, and I so rule again.

Mr. Feldman: I respectfully except.

The Court: Is the Government ready for sentence?

Mr. Bolan: Yes, the Government is ready for sentence, your Honor.

The Court: Is the defendant ready for sentence, or would you like to consider the matter?

Mr. Feldman: I would like to think a little while about that.

The Court: Let me ask you this, Mr. Bolan: Has the defendant any criminal record?

Mr. Bolan: No, your Honor, not to my know- (1199) ledge.

The Court: Is he on bail?

Mr. Bolan: I don't believe he is; no, he is not.

Mr. Feldman: He is released in his own recognizance.

Mr. Bolan: Released in his own recognizance and the Government would move to have bail set.

The Court: Is there any desire on the part of counsel for the Government or the defendant that before passing sentence the Court get a pre-sentence report through the Probation Department, or is that unnecessary?

Mr. Feldman: Well, your Honor, I would consider that at this point entirely prejudicial, in view of the fact that the Government has a pending indictment and——

The Court: I mean if you do not want me to do that, I will then set the sentence in this case for Monday morning, October 22nd, at ten o'clock in this room, and I will direct that the defendant be remanded and bail be fixed for him in the sum of $5,000.

Mr. Feldman: Your Honor, I would most respectfully point out that the total amount of tax in- (1200) volved here is $1400 over the six-year period.

The Court: But the total amount of fine that may be imposed is $20,000.

Mr. Feldman: Quite true, your Honor.

The Court: I mean in the case of a man who is guilty of the crime, it is not a question of how much he got away with. I mean this is a serious offense and I will fix bail at $5,000. I do that so that the defendant until sentence, if he puts up the bail, can be released on bail; that is, until the sentence is imposed, and sentence will be imposed on Monday.

Mr. Feldman: Well, your Honor, in view of the fact that the type of seriousness and consideration that the jury has given to this case——

The Court: By mentioning $20,000, I do not indicate anything other than the maximum fine, you understand that?

Mr. Feldman: I understand that, your Honor, but I point out to the Court very frankly in relation to the crime committed or alleged to have been committed, that this is the highest bail that I have ever heard of, sir, being set.

The Court: $5,000?

(1201) Mr. Feldman: Yes, sir, in a situation like this. Mr. Bolan, Your Honor—

Mr. Feldman: And I point out to the Court the tax amount involved.

The Court: I am perfectly willing to remand the defendant without bail if you feel the bail set is exorbitant.

Mr. Feldman: Your Honor, what gain is there to have—

The Court: The defendant has been convicted of a felony for which he can serve a jail sentence and under those circumstances it seems to me that it is proper that he be released on bail.

I will direct that the defendant be remanded and fix bail at $5,000. Sentence will be imposed Monday morning at ten o'clock, in this room.

Mr. Feldman: I would direct the Court's attention to the fact that apparently there is some statement coming from the jury that the jury wishes to deliver to the Court, and the jury has not as yet been discharged.

The Court: The jury will now be discharged.

Mr. Feldman: Well, wouldn't it be appro- (1202) priate to hear what the jury has to say, your Honor?

The Court: What the jury has to say after being discharged is not a part of the record, as you know.

Mr. Feldman: I respectfully except.

The Court: And that the jury had been polled at your request, and they have already confirmed their verdict on the record.

Mr. Feldman: Your Honor, I would point out that the statement that I indicated to your Honor that the jury wished to make was before the Court indicated that it was being discharged, and it is for the purposes of this case that I ask the Court to hear them.

The Court: Ladies and gentlemen of the jury:

I want to thank you very much for the careful consideration you gave to this case. I have never seen a jury which has been more careful and conscientious in the performance of its duty, and we owe a debt of gratitude to men and women such as you who are ready to spend your

time carefully and conscientiously in the performance of your duty.

I think if I may say so that you reached a very fair verdict in this case, and we all appreciate what you have done. You are discharged with the thanks (1203) of the Court.

I take it that the jurors do not have to report for further jury duty.

The Clerk: They have an alternative, if they wish to return on Monday, they may, your Honor.

The Court: Any member of this jury who wishes to return for jury duty on Monday may do so, and those of you who don't are excused until you are called again.

(The jury was excused.)

The Court: Court stands adjourned until ten o'clock Monday morning.

(Adjourned to October 22, 1956, at 10:00 a.m.)

(1204) New York, October 22, 1956;
10:00 o'clock a.m.

The Clerk: United States of America vs. Acy Lennon. Both sides ready, gentlemen?

Mr. Bolan: The Government is ready.

Mr. Feldman: The defendant is ready.

The Court: All right, Mr. Bolan.

Mr. Bolan: Well, your Honor, the Government, as usual, has no specific recommendation one way or another. The Government does have a few comments to make, particularly with respect to Congressman Powell's statement over the radio Friday that your Honor gave the defendant one of the rawest deals a man ever got.

The Government considers this statement to be completely irresponsible, reckless and outrageous, particularly when coming from a man in such a prominent public position.

The defendant was given fair treatment by the Government; he was given a fair trial lasting over two weeks, and he was given the utmost consideration by the jury which deliberated for over 25 hours before reaching a verdict. The statement by the Congressman (1205) coming before sentence, can be considered as nothing but an attempt to put pressure upon the Court, and the Government deplores such a serious indiscretion on the part of Congressman Powell.

Now, with respect to the charges concerning which the defendant has been convicted, I think the trial has revealed that the defendant's attempt to evade taxes was not the mere going into an isolated attempt; the trial showed that this man at every single opportunity sought to cheat and evade taxes owing by him not only with respect to omissions of income but with respect to his deductions on each of his returns. There is hardly an item on any of those returns that can be considered an honest reporting of the deductions or of income.

Now, the Government does not make any recommendation of leniency. The Government thinks that this man deserves no leniency. His attempt to evade taxes had been wilful and that of a deliberate person. And I may point out that with respect to the item of the Tenants Protective Association, concerning which the Court ruled that there was not sufficient proof to go to the jury, that although there was not sufficient proof to go to the jury (1206) that transaction again indicates that this defendant was engaged in something that was not lawful. Your Honor recalls that no one seemed to recall who signed this $3000 check; no one seemed to recall what happened to the money. Statements by witnesses completely contradicted each other. Congressman Powell and his good friend Mr. Klein gave completely opposite stories as to a

conversation that they had, and either the Congressman or Mr. Klein deliberately lied.

Now, of course, this cannot be held against the defendant but the whole transaction was one in which the defendant had a direct participation and, as I say, is again an indication that this man, apart from his income tax evasion, also participated in other transactions that had a very distinct unpleasant aroma.

As I say, there can be no doubt but the defendant's actions here were completely deliberate and wilful and that as a result he is deserving of no leniency on that score.

(1207) The Court: Mr. Feldman.

Mr. Feldman: Well, your Honor, if any resentment is to be expressed, I am going to express it now. I do not think that in a proceeding before the Court prior to sentencing of the defendant that the court should be used as a political forum. I think that all of us are entitled to our opinions, and those of us who are not part of the judicial system can give vent in language of their own choosing, and that that should not influence any judicial deliberations, or the imposition of any sentence. And in that connection I would be remiss in my duty if I did not respond to the charge since I am defense counsel and apparently would be remiss in the discharge of that duty to my client if I did not in response point out to the Court that the verdict of the jury was hardly pronounced but that the United States Attorney for the Southern District of New York hastened into print with the statement that the investigation of Congressman Powell was still continuing.

The Court: Well, let us leave the politics out of this thing.

Mr. Feldman: I respectfully point out to the Court that Congressman Powell was not on trial in (1208) this case, and that the Tenants Protective Association issue in this case was dragged in by the heels for the purpose of creat-

ing a political atmosphere and this Court during the course of the trial had to go to some bounds to point out to the jury that they were not to be influenced by that sort of thing, and that they were to be influenced only by the evidence in this case.

And to this very day, your Honor, I, as an experienced attorney, and your Honor, as an experienced attorney and jurist as well, will recognize the fact that we will never be able to determine what this effort by the Government did to affect the jury in its deliberations, and I point out that this effort by the Government dragging the Congressman Powell issue in, in an effort to have the Court impose a stronger sentence is further illustrative of the Government's plan to punish Congressman Powell by making——

The Court: There is no such intention, no such intention on the part of the Court, and if politicians want to make indiscreet statements over the radio, they will be regarded as just political statements by me, but they have no relevance in this proceeding.

(1209) All I am concerned with here is the guilt or innocence and the sentencing of this particular defendant.

Mr. Feldman: And if I may——

The Court: I was shocked that any member of Congress would take to the radio and announce that a man in this court did not get a fair deal, but I am not going to hold it against this defendant.

Mr. Feldman: I am pleased to have the Court announce that on the record.

The Court: All right.

Mr. Feldman: Because it was a matter of grave concern to me.

The Court: All right. Now, let us get down to business.

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 148-204, C 150-247

—o—

UNITED STATES OF AMERICA

v.

ACY LENNON

—o—

On this 22nd day of October, 1956 came the attorney for the government and the defendant appeared in person and by counsel,

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by him to the United States for the calendar years 1949, 1950, 1951 and due and owing by him and his wife for the calendar year 1952. (Title 26, section 145(b) U. S. C.). as charged in counts 1-2-3-4, and the court having asked the defendant whether he had anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

Judgment and Commitment

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of

Count One—One Year and One Day and fined $1000.
Count Two—One year and fined $1000.
Count Three—One Year.
Count Four—One Year.

Prison sentences on counts 1-2-3-4 to run concurrently with each other.

Defendant to stand committed until fines on counts one and two are paid or he is otherwise discharged according to law.

Bail continued pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall or other qualified officer and that the copy serve as a commitment of the defendant.

/s/ ARCHIE O. DAWSON
United States District Judge